TOPICKS
In the Laws of ENGLAND.

Containing *Media*, apt for Argument, and resolution of *Law* Cases: also an Exposition of severall words, not touched by former Glossaries.

Non omne Argumentum undique venit ideoque non passim quærendum est, multus alioquin error est exhaustoque labore quod non ratione scrutabimus non poterimus invenire nisi casu. Quintil.

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JUL 2 3 1934
7/23/34

To the Honorable Oliver Saint John Esquire Solicitor Generall,

AND

Oliver Crumwel

Esquire, the Honourable, Prudent, and Valiant Lievtenant Generall.

Honorable,

IT may be matter of marvell, that any thing of Law should now be heard but to whisper amidst the noyse of lowd Instruments of Warre, this may Apologize, that both sides professe the maynetenance of Laws. If

again it ſeeme ſtrange to any that I joyne for Patrons of a Lawbooke a Sword-man, and one of the long Robe together: let this ſuffice, that the laſt is well known to have bin longer time a Mecœnas of Schollers, then a Commander of Souldiers and men are alſo well perſwaded that the points of theſe ſwords are bent onely againſt the adverſaries of thoſe Laws which are written upon their hilts. Theſe Laws are now in danger, and the Common-wealth with them who can ſit ſtill and do nothing like old Creon, when his houſe was on fire embracing his only daughter, but helped nothing till himſelfe and ſhee were conſumed in the flame. With my eſtate I cannot helpe, that was long ſince taken from mee by the injuſtice & oppreſsion of the Popiſh Northern Army, and our own malignant Countrymen who called in that Army, and aſsiſted them. With my body I can do little being ſomewhat in yeers and

more

more unfitted by a ſedentary life, beſides uncalled upon for ſuch ſervices. I both approve and ſomwhat reſemble the Spaniards *poſture, who when he is bleeding his laſt, and ſo weake hee cannot ſtand to fight, yet while any life is in him hee will be brodding at, and pottering upon the ground, every way with his Rapier or Dagger point as if hee would doe ſomthing, wound his enemie, &c. if he were able. Theſe weake eſſayes ſhews a minde to doe good to the publike; In them little new Law can be found, they rather ſhew how to uſe the old, the Logick of the Laws which is to be inſtrumentall to all other Sciences, and called by the Philoſopher* Orgánon Orgánon. *If theſe obſervations ſhall have any uſe that way or any elſe, I have my ends: Your honourable favours to me who are, ſo much one for the publike hath been reaſon enough to me to joyne you in this Dedication,* Eadem ſentitis, eadem agitis, in foro

&

& in campo. *The* Romans *called some of their Worthies* Gladii Romanorum, *so* Marcellus, *other* Clipei, *so* Fabius Maximus, *both goe together, both usefull now. I shall not need much to implore your protections who cherish every sparke appears for the publike. The Lord make you ride on with good luck for the rejoynting again his Majesty, and the great Counceil of* England, *the Head and the Members, and that the Lawe, one part (whereof is priviledge of Parliament) may be maintained and duly executed, for as* Bracton *saith,* Parum est jus in Civitate esse, nisi sint qui possint jura gerere, *which if I mistake not, is a main ground of this bloudie Quarrell, which God end in due time, and in the accomplishment of Peace and Truth, which shall be the continued prayer of*

From my chamber in the Inner Temple.

Your humble Servant,

J. C.

To The READER.

MAn by his defection from his Maker, loſt Truth as well as good; and is fain to gather up the one as well as the other by peecemeale, as a Bee that goes from flower to flower to get up any reaſonable quantity of honey: How many *minutula fruſtula* are there found and left from one Age to another by ſuch as have been wittie and induſtrious in each Science, and altogether will not make up halfe that the firſt man had in the bnlke *uno intuitu*, as it were. The Philoſophers have left ſome *Principles*, *Axioms*, and *Topikes*,

the Humaniſts, Phyſitians, and Moraliſts *Aphoriſmes*: Muſitians their *Syſtemata*, for to that Science I take that word properly to belong, though uſurped by the later Logicians. The Lawyers their *Maximes*, *Brocardica*, *Grounds*, and *Placita*: Others their *Paradigmata*, *Loca Media*, fit for invention and argumentation, ſome of theſe by experience are demonſtrative, and more immediately, certainly, and reſolvedly bring *Scientiam*, others are of a lower ranke, and are called *Dialectica*, or *Probabilia*, which helpe to reſolve queſtions and caſes with a more trembling judgement, and ſome fears, as they ſay, leaſt the truth may be otherwiſe, and is termed opinion, as that other knowledge; of this kinde are theſe few Obſervations of mine, and I call them TOPICKS, in which one may finde matter of argument for caſes ſhall be propoun-

ded

ded, and raiſe Majors in which the chiefe vigour of argument lies: I dare not call them grounds of Law, as hee did who once made an eſſay in this kinde, yet I finde a great *Rabbin* in our Law cals them *Rules* of Law. I have put them down in the moſt familiar way of our Books expreſſion, which is in various languages, which will prove moſt uſefull, the Law of *England* intending matter, not words, and it brings what we have read in our books quickeſt to our apprehenſions, whereas the turning of thoſe terms into fine Latine, or civill Law expreſſions, as ſome of late makes uncouth to the Engliſh Lawyer, and far leſſe uſefull: There be 400 titles and terms of Law in our books, and yet if you have preſent uſe of any of theſe Topicks, you cannot finde them there, in this you may, which will ſerve not onely to grace argument, but reſolve ſome doubts,

Inſtitutes 1. 152.

I haue made each place good by Book Cases, and some few Reports, you may add more in your daily reading without such obseruations, the Student will be put far to seeke for such Rules and Cases upon a suddain, I haue put them in an alphabeticall order, the more easie to finde them and make use of them, other method to dream of in Law learning as some haue done is vaine, sithence it consists of infinite particulars, of which the Logician determines thus. *Individua non recipiuntur in methodum propter infinitatem.* Vale.

J. C.

Contenta.

Act of God shall preiudice no man, 1
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Averia
Aut
A, ab, abs
Abbathia
Antehac
Competens
Consueta
Circiter
Ultra
Infra Circa
Discretion
Donque, then, tunc
Demise
Et
Expiration
Esteant, being
Exactionibus
Est, fuit
Eviction
House
Horrible, enormous
Incontinenter & immediate
Infra 4 Maria
Inhabitant
Resiant, commorant
In, apud, ad, de
Interest
In manibus
Inde
In rerum natura
Ipso facto
Iuxta
Infra
Macremium
Meniall
Nuper
Pacatione
Prætextu
Prima, Proxima
Pacifice
Pro
Forfeiture
Puer
Nos, vos
Permittere
Res
Sufficienter
Sure, estate
Similiter
Prædict.
Paratus
Et cætera
Comodities
Sovereigne
Subditus
Miniments
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The

The Law iudgeth of some things actually done as not done & è converso. 69
The Law adiudgeth the same thing in esse, & non esse to divers purposes. ibid.
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The act of God shall prejudice no man. Upon this reason it is if the heire at full age tender Livery, and dye within three moneths, which is the time given by law to finish his Livery, he shall have no prejudice, but as much benefit as if he had actually sued it forth, and the interest of the King is determined. Lessee for the life of I.S. is disseised, now to recover the mean profit the Law requires an entry, if I.S. dye, which is the act of God, by which his entry is taken away, he shall maintain an action of trespasse without entry, and recover the mean profits. Lessee Covenant to leave a wood in such plight as it was in time of the lease, it is subverted by tempest, he is excused of his Covenant. The *same Law* is of *impossibility*, as if it be impossible to gain actuall seisin, in such case tenancy by the courtesie shall be without it, as in case of Rent and Advowson, and the wife dye before the rent day, &c. *Exception out of this rule is*, if the act of God is not so meerly, but the folly of the party intermixed, as where after battle joined, one of the parties becomes blind by his own fol-

8 Report *Hall's* Case.

38 H. 6. 28.

1 Report. 98.

2 H. 3.

ly it shall not excuse him which otherwise would. A River changeth his course and runs upon my ground, the common road shall be upon this as formerly, because it is not meerly the act of God, but my negligence. In like manner, the rule of Impossibility fails where it was known to me before, and therefore if I am bound to go to *Rome* and return in one day the bonds good. So if the matter was not meerly impossible, as if I. S. assume to carry goods safe by water, and they are overthrowne by tempest, this shall not excuse him because he might have carried them another way, &c. but if the carriage was to be by Sea otherwise it had been. Lastly, impossibility shal not excuse where no person is in being at the time to receive hurt by the impossibility, as tenant for life is the remainder to the right heires of I. S. Tenant for life is disseised, and disseisor levies a fine at the Common Law, I. S. dyes, his right heire shall be bound, &c. though it was impossible he should make claime, or entry for to avoid it, &c.

22 Ass. 93.

4 H. 6. 3.

32 Eliz.

1 Report Case *Archer.*

2 *Act of a Court shall prejudice no man & contra.* In assize a verdict is given for the Plantiffe and at this time Corne was grow-

growing upon the land, the aſſize is adjourned into the Common Place and before judgment, given the corne is ſevered and taken away, he which recovered ſhall loſe the Corne by this adjournment. A man ought to have the priviledge of the Chancery, as ſervant, the Court adviſes upon it, and in the mean time the maſter is dicharged of his office, yet the ſervant ſhall have his priviledge. The Court inlargeth him that is in execution contrary to the Law, its ſaid the party is without remedy, *utlagarie* after judgment is pardoned by the Chancellor, the debt not ſatisfied which is a wrong, Its left doubtfull whether the party can have any remedy, yet for the moſt part the party ſhall not be prejudiced, as if the Court adviſe upon a protection and before the day, in Bench the protection is repealed, or a Writ of Errour caſt in upon the firſt Record, upon which this in queſtion depends, yet the Court will give judgment. After Counſance of plea prayed, the Court gives a continuance, this ſhall not hinder the party to have Conuſance of plea. See *Inſtitutes* 3. *title Appeal.*

41 E. 3. 19.

35 H. 6. 3.

2 E. 4. 8.

2 Eliz. *Dyer* 172.

10 H. 6. 6.

35 H. 6. 54.

3 *Who ſhall do the firſt Act, where it is*

doubtfull. Hee that ſhall have advantage by it ſhall do it, the condition of a bond is if the obligor reſigne his Benefice for a penſion to be granted to him as they can agree, then the bond to be void. It is not ſufficient to agree of the penſion, but the obliegee ſhal tender a deed for the aſſuring of it to the obligor. So where a Covenant is to aſſure the Mannor of D. to I. S. before *Michael.* next, as Counſell ſhall adviſe the Counſell of I.S. ſhall give the adviſe, and alſo tender the aſſurance. Note where the thing is certain to be done, hee which is bound in aſſumpſit, or a bond ſhall do it to to ſave an action, and damage to be recovered againſt him. Aſſumpſit to make a feoffment to I. S. is, and an action is brought without requeſt or tendor of any deed of feoffment, and well mayntainable becauſe the other may make it without deed and requeſt is not agreed upon. Condition of a bond is that the obligee ſhall bring three ells of cloth to the ſhop of the obligor which ſhall be meaſured, the obligor ſhall do it to ſave his bond, *aliter eſt*, if the obligor is the tailor. An obligation is to build a houſe, as I.S. ſhal deviſe the obligor ought to procure this adviſe to ſave his bond

14 H.8.18.

Old book entries, 5.

E. 3. *Car. per Noy. in Caſu & Brown Stroude.*

4 *Act implicit where not ſufficient but ſhall be explicit.* Two Garniſhers are in a reall action, and a ſtranger in their preſence doth ſpeak the words of garniſhment, this is not ſufficient, but they in proper perſon ought to do it themſelves. 43 E. 3. 32.

5 *Act of an Enemy ſhall turn to my benefit.* As where ſeverall *Niſi prius* are ſued by the Plantiffe & Defendant by proviſo, and they have ſeverall *Habeas Corpora*, the Plaintiffe faile *in Jurata Continuanda*, but the Defendant doth continue it, the Plantiffe ſhall take avail by it, as if he himſelf had done it. 4 Eliz. *Dyer* 217.

6 *Act ſubſequent ſhall be guided by agreement precedent.* I. S. pays a hundred pounds at the day in the condition limited, if agreement was before that hee ſhould have part of that hundred pound againe, this is no performance of the condition, A. brings goods into the Market to ſell and there was an agreement before out of the Market for theſe ſame goods, if I. S. had the true property of theſe, no property is altered by this ſale. *Sic è converſo.* Act precedent by act ſubſequent, as where the Lord diſtreins his tenant, and after kils the diſtreſſe, this in Law is a Declaration Inſtitutes 1. 109. 1 Mar. *Dyer* 99

32 E. 4. 8. of his intent from the beginning, and makes him a treſpeſſer. Land diſcends to two daughters, the eldeſt enters into the whole, and makes a feoffment with Warranty, this declares the generall entre to be for her ſelf, and not for them both, and conſequently it is no Warranty by diſſeiſin.

9 Report Caſe *Dowman.*

7 *Act imperfect of the part of the one party ſhall be ſo of both.* As a woman within the age of 12 yeers is married to a man of above 14 yeers, in this caſe though hee may conſent to marriage, yet becauſe ſhee cannot, he is at liberty to diſ gree to this marriage as well as the woman.

Inſtitutes 1. 79

8 *Act executed where it ſhall be defeaſible and contrary.* The husband and wife joyn in a Leaſe of the Lands of the wife, or grant her goods, and after they are divorced this ſhall ſtand. So when an Adminiſtrator doth neceſſary acts, and then the Executor proves the Will, yet thoſe acts ſhall ſtand firme; ſo where a Parſon makes a Leaſe, and after is deprived becauſe a Layman, the Leaſe ſhall ſtand.

P. 42 Eliz. Caſe *Coſterd.*

Inſtitute 1. 138. & Kell. 126.

9 *One Act may inure to two intents.* The tenant infeſts the Lord and a ſtranger, and makes livery to the ſtranger, in name of both the Lord enters and diſtreins, this

3 Report Caſe B. & Bac.

is

is a disagreement to the feoffment, and a devesting of the Freehold. Tenant for life impleaded, prayeth in ayde of the Grantee of the Reversion: this shall amount to an Attournament. Lessee Surrenders to the Grantee of the Reversion, this amounts also to an Atournment. A Parson demiseth to his Patron who assignes this over to I. S. this is a good grant of the tearme, and also a Confirmation, the same Indenture may revoke the old uses, and declare new uses. 38 H. 6. 37. 12 H. 7. 15. Plo. 87. 5 Report 15. 6 Report Case Fitzwilliams.

10 *Actori incumbit onus.* A partition is sued of the Mannor of D. one defendant alledges that part of the land was purchased, & is not parcel of the Mannor, he ought shew the certainty of that parcell, otherwise the Jury are not bound to find it, if they do that, *est veresimile.* Dyer 266.

11 *An Act to himself, a man may doe and contrary.* A Sheriffe is Plantiffe, hee may take pledges to himselfe, and hee may execute a *Replevin* against himself as I. S. tenant in tayle, vouch himselfe to save the tayle, hee may have Processe against himselfe. The Sheriffe is in seisin of a Bayliwick, of a Liberty by seisure, he himselfe as Sheriffe shall command himself as Bay- 11 H. 7. 4. Institutes 2. 139. 34 H. 6. 2. 5 H. 7. 2. 8 E. 3. 21.

ly of that Liberty, to execute that Proceſſe. There is a Writ in the Regiſter directed to the Sheriff, to inhibit himſelf, that hee proceed not in a Writ of right, a Biſhop is defendant in a Writ of Dower, he himſelf ſhall certifie the loyalty of the marriage in his own Caſe. The old books differ whether a Sheriff may ſummon himſelf or no, but later authorities have reſolved it, that he cannot, but where two Sheriffs are, the one may ſummon the other, but then note, a ſpeciall mention ſhall be of that in the Writ, and direction that the other ſhall ſummon him. It is holden, the Sheriff who is demandant may execute all proceſſe till it come at the *Venire facias*, otherwiſe where he is tenant. The Archb. of *Canterbury* is made executor to one, who hath *bona notabilia*, if he wil refuſe the executorſhip hee ſhall make this before his Commiſſary and not by himſelfe; a Sheriffe is conuſee of a ſtatute, he cannot execute a Liberate himſelfe. It is doubted whether a ſteward may admit himſelf to a Copyhold or no. See more of this title, 14 *H.*8.31. *Plowden Caſes, Plat. viceſimo primo* 6.16. *Coke Juriſdiction of Court.* 105.

F.n.b. 4.e.

10 E.2.ff. Triall 100.

Michel. 14. & 15 Eliz. Caſe, Vic. *Norwich.*

20 E.4.7.

9 E.4.33.

Trin. 43. Eliz. Caſe. Sir *Thomas Gerrard.*

12. *Where part of an Act cannot be performed*

formed, yet the reſt ſhall. The condition of a bond is that I.S. ſhall be aſſured at *Michael.* of the Remaynder of the Mannour of D. after the death of I.S. and that H. ſhall be preſent at this aſſurance, H. dyes before *Michael.* yet the aſſurance ſhall be made, the ſame Law is if the words were that R. himſelf ſhould be preſent, though he comes not then and there, yet the aſſurance ſhall not ſtay of that, becauſe his preſence is not neceſſary, For the Remaynder may be limited to him abſent. 40 E.3.12. Caſe *Io. de Peche.*

13 *One ſhall not have benefit of his own Act; prejudice he may.* A man is *utlage* of felony, or condemned in debt, execution ſhal be done notwithſtanding. And this holds againſt the King himſelfe. Q. *Mary* who had an eſtate *dum ſola fuerit*, granted a Rent, the Reverſion diſcends to her, and then ſhee marries, it ſeems ſhee ſhall not avoid this Rent by her mariage, *contra eſt aliquando*, by the folly of another, as one enters a bond to A. that he and A. ſhal ſtand to the arbitrement of I. S. or that A. ſhal take a Feoffment of him. A. refuſes, he himſelf ſhall take the forfeiture of this bond for the folly of the other to undertake this. If one that hath Collation 6 E.4.4. 5 Mar, Dyer, 141. 33 H.6. ff. barr. 165.

to

to a Benefice, do preſent to it hee hath loſt his Collation, and ſubjected the Church to a lapſe, &c. ſo if a Parſon impropriate preſent to the Church, it makes it diſappropriate. A Lord holds land for the value of the mariage by two yeeres, and the tenant enters before all is levied, the Lord ſhall recover the whole value. An heire who held by homage and fealty takes his land of the King upon office found, that hee held by forty pound *per annum*, he ſhall be bound all his life time to pay that Rent ſo prejudiced by his act.

F.n.b. 35 E.2.

44 Aſſ.35.

14 *One ſhall be puniſhed for the Act of another.* A diſſeiſor ceaſeth, the diſſeiſee enters, he ſhall be charged in a *Ceſſavit*. Accompt is brought againſt two, the one enters into the accompt, and it is found againſt him, it ſhall bind both: One is impriſoned in the Marſhalſes, a ſtranger breaks the priſon, the Marſhall ſhall bee charged for the whole debt. I have a way over the lands of twenty men, one of them ſtops the way in his land, I ſhall have an action againſt all thoſe over whoſe lands the way was. A rate is put upon a towne for the fees of a Knight of the Parliament, the beaſts of him hath payd his part, are ta-

44 E.3.4.

44 E.3.13.

33 H.6.26. *per Priſot.*

11 H.4.2.

taken for the reſidue, hee ſhall not have a replevin, but the beaſts ſhall be ſold to pay this dutie.

15 *One ſhall not defeate his own Act: & è contra.* Leſſee for years grants the next avoydance, and then ſurrender, this ſhall not deſtroy his own grant. A grant common to B. for a horſe, and after grant a Rent charge, the horſe of B. ſhall not bee deſtrained. *Brook* the chiefe Juſtice did put out an Officer which he himſelfe had admitted before; And ſo an Ordinary may admit the ſame partie able, whom he hath returned disable before.

8 Report Caſe *Davenport.*

20 H. 7. 10.
5 Mar. Dyer 151.

16 *Agens & conſentiens pari pœna plectuntur.* If one takes a horſe by wrong, by my conſent, treſpaſſe lies againſt mee, A. mayme, B. by aſſent of C. appeal lies againſt A. and C. and damages equally againſt both, otherwiſe it is where intereſt is to be bound, as Dean and Chapter, ſeiſed in *ſimul*, the Dean leaſeth the Land with conſent of the Chapter: This is not good.

43 E. 3. 43.

22 Aſſ. 82.

Dyer 40.

17 *A Poſſe adeſſe non eſt bona argumentatio, ſic à non eſſe ad non poſſe.* A deviſe is of Land in fee, ſo of goods, if the Deviſee dye before the Deviſor his heire, nor

Plo.345. Caſe *Brett.*

nor Executor ſhall gaine any thing by this Will. A. is indebted to B. 200 pound, and delivers goods to him to ſell, *meliori modo quo poterit*, to pay himſelfe hee is proffered 200 pound for the goods, and refuſes it, and after hee ſels them for 12 pence, A. ſhall anſwer the reſidue of the debt notwithſtanding this proffer and poſſibility was, &c. Lands have never been departed betwixt males, therefore cannot be is a *non ſequitur*.

18 E.4.5.

5 E.3.64.

18 *A poſſe ad eſſe bona ſit argumentatio.* Condition of a bond is to ſave harmleſſe without damage, if he may be damnified, though he is not *in facto*, the condition is broken. If an Eſchetor may ſeiſe goods for a forfeiture, it is all one as if hee did, when he will he may. A husband hath a terme in the right of his wife, and is a debtor to the King though hee dye, this term ſhall be charged to the King, the ſame law of one joynt tenant debtor. Tenant in tayle, becauſe it is in his power to dock the remainder upon this, the law takes this as done, and for this reaſon puts no value upon it, as Aſſets to an heire, &c.

5 Report Caſe *Broughton.*

18 E.4.28.

50 Aſſ.5.

6 Report, Sir *Anthony Mildmais* Caſe.

19 *A non poſſe ad non eſſe bona eſt argumentatio.* The condition is, if a rent is be-

behind and no diſtreſſe, he may re-enter, he demands at the day, and the doore is ſhut againſt him, albeit a diſtreſſe is in the houſe, becauſe hee cannot come to it, the condition is broken as if no diſtreſſe were there, ſee if requeſt ſhall be to open the doore. Paſch. 23. Eliz

20 *Act me invito fait neſt mon act.* I chaſe Deer out of my land with a dog, and after I recall the dog, but hee notwithſtanding purſues him and kils him within the liberty, I ſhall not be *puniſhed for this within* the ſtatute. An aſſize of Common is brought and hanging this the Plaintiffs cattle eſcape thither, this ſhall not abate his Action. 43 E. 3. 8. F. n. b. 180. 33 Aſſ. 9.

21 *Argumentum à minori ad majus tenet affirmative.* Upon this reaſon a Proviſo in the ſtatute of ordinaries extends to the High Commiſſion, which is above them, and the *contrary is alſo true*, as a ſtatute which ſpeaks of Deanes doth not extend to Biſhops. So the Statute of 8 *H.* 6. which ſpeaks of Clerks raiſing Records, a Judge is not within it. So in expſition of Treaſons this argument doth not hold the leſſe is made treaſon. *Ergo* the greater, &c. 5 Report Caſe *Cawdry.* Inſtitutes 3. 72. & 20.

21 *Bo-*

22 *Bonum publicum privato preferendum.* Upon this reason a man may dig in my soyle to make Bulwarks against enemies of the King. So fishers in the sea may come upon my land, &c. Its lawfull to break a doore to finde a Felon if felony is done. Upon this reason the Civillians say, *Si piscator ligat navem ad arborem dominus arboris eam incidere non potest:* upon this reason it was that the King might cut my trees for repayre of his Castles before *Magna Charta.* And if the King grant to a County or Hundred, that they shal not be Jurors in Enquests, it is void, because publique prejudiced.

36 H.8. Dyer 60.
8.E.4.19.
13 E.4.9.
Lynius 35.
Plo.322.
21 E.4 47.

23 *Causa qualis tale Causatum.* I covenant with one, & his executors make a lease of B. Acre before *Michael.* and the Covenantee dyes before *Michael*, and I make the Lease to his Executor, this Lease shall be in the same degree as the Covenant was, and so shall be to the use of the testator, and Assets in the Executor, the same Law is if an Executor have a villaine who purchaseth land, hee shall have this as he held the villaine, &c. *fallit regula,* In case assise is brought oyntly against father and his daughter, and the father saves

Plo.292.
Case *Chapman.*

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he is villein to I. S. howbeit ſhee is of the like quality, yet this plea ſhall not be materiall to her. 10 Aſſ. 7.

24 *Cauſatum non excedit ſuam cauſam.* Tenant for years grants a Rent for life of the Grantee. He ſhall not have freehold in this Rent, but if he die within the terme, the Rent ſhall ceaſe, and ſhall be as if granted for ſo many years as the Grantor hath, if the Grantee ſo long live, but ſee *ibid.* that for neceſſity of reaſon, and by fiction in Law, it may be otherwiſe. Plo. 524. 15 E. 4. 8. Plo. 555.

25 *Cauſans damnum equalis facienti.* If one breake down a gap in my hedge, by which beaſts eſcape into my Cloſe, from the Common adjoyning, now the treſpaſſe which at the firſt was onely 4 d. may bee 20 lib. by the inſuing damage. Two combat, and the one kils the other, & this was by reaſon of the words of a woman; ſhee was arraigned for this felonie. Treſpaſſe for burning the Plantiffs houſe, & declares that it was burnt by negligence of the defendant and holden, a good count to maintain their writ. If the partie ſhews other goods then he ought to do in a Replevin, or in a *Cap. ſa.* ſhews a wrong man 9 E. 4. 4. Stamford 17. 48 E. 3. 25. 11 H. 4. 91.

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man to the Officer, he shall be charged in trespasse, and false imprisonment, and so shall the other too. Somtime the Law more punishes the causor then the actor of an injury as a *Capias* issueth where it ought not, he that took it out shall be punished, but the sheriffe excused.

Michel. 23. H. 7. Kell. Pla. 5.

26 *Conjunctive, and collective, words taken severim and discretive.* Three men submit themselves to arbittrement of all matters betwixt them and A, this shall be not onely of matters they have joyntly against A, but what either of them hath against him. An estate is limited to two, & if they die without issue, the remainder to another in this case, upon the death of either of them, the estate as to his part shall go to the remainder man. Severall demises and rents are in one Indenture of lease and lessee Covenants, to pay *reditum prædictum*, this Covenant extends to all the severall rents: Two grant *omnia bona*, so A. releases to B. and C. all actions, this extends to their severall goods and actions, as well as joynt. Three severall men make three severall Covenants, and in conclusion of the Indenture one is bound to performe the Covenants made be-

2 R. 3. 18.

16 Eliz. Dyer Case, *Clatches*.

No. lib. d' Entries 115.

19 H. 6. 6.

21 H. 7. 6.

betwixt A. I. and S. This doth extend to the Covenants *separatim*. *A scire facias* is against the successor of a Prior of D. and shews a recovery against his predecessour and part behinde in his owne time. *Et quod non redierunt, &c.* and this ruled good. See *Dyer* 150, 17 E.4.2.

26 *Causa cessante cessat effectus*. If the offence is pardoned, for which the Sheriffe ought to be amerced, no amercement shall be. The husband and wife lease by deed, he dyes shee accepts the rent, if the Lessee lose the Deed of lease, she shall avoid the lease, for this was the sole cause she was estopped, &c. The Feoffor shall have and hold the Charter of the land against the Feoffee, by reason of the Warranty, but if this determine he shall hold them no longer, but note it is cause executory is intended, as Annuity granted *pro consilio*. I grant to I. S. that I will clayme nothing in the Mannour D. of which the Grantee is seised, and for this he grants me an Annuity, in this Case the entry of the Grantee wil not cause the annuity to cease, and see *ibid*. A good Case of an Advowson granted for an annuity. And note it is not in the power of the Grantor to cease his own 37 H.6.tit. 5 Report Case *Vaughan*. 36 H.6.24. 15 E.4.27. 1 Report 2, 4 Report, Case *Acton*. 15 E.4.3. 24 E.3.53. 4 *Abbot* and *Lewes* Case.

grant, as if hee will say to the Grantee hee will not have his Counsell, the Annuity shal continue, though *Richel* in 7 *H*.4.16 thought otherwise. A man grants to make a new pale for the old one, if hee cannot have the old one, he is discharged to make a new one, yet in *Pigots* case, if he can have an Action for the old pale, he is bound to make the new one. Note another difference, where the Office determines for which the Annuity was granted, that shall cease also. see 12 *Ass*.41.20 *Ass*.27 *E*.4.10 49 *E*.3.45. 1 *H*.4. *ultimo*. Note another difference. It must be *causa* not *circumstantia*, which causes this Cesser, and therefore where Covenant is to make Divine Service in the house of the Grantee every Sabboath day, though the Grantee depart with the house, yet the service shall be done. But if the cause cease but in part, the whole Annuity shall be lost. The King grants the office of a Keeper to two, and the one fails in discharge of his duty, the the whole fee shall determine. So if Annuity is for Counsell to two, and the one refuse, *fallit hæc regula*, as where a Guardian in Chivalry hath the body in ward, and there be other lands in Soccage, the next of kin shall not have this land in

15. E.43.
5 E.4. &

Plo.381.

6 H.42.

Plo. Case.
Nevill.

Ward, though the body of the Ward is to another (which is the cauſe) but the next of kin to whom it cannot diſcend ſhall have it. Arbitrement is to pay ten pounds for ſixe yeeres, to educate B, B. dyes, yet the payment ſhall continue during the terme, Proceſſe agard to the Coroner for Coſinage to the Sheriffe, who after becomes out of office, and another put in, yet the Proceſſe ſhall continue to the Coroners. *Vide* more of this matter and title, 4 *Mar. Dyer* 141. *Kell.* 124. *Davis Reports* 3. and *Caſe Lutterell* 4 *Report*. Plo. Caſe, *Carrell*. Dyer 329. 14 H. 7. 31. 18 E. 4. 3.

27 *Coliquintida parum totum Jus vitiat.* A ſuit is in the ſpirituall Court for wood, tithable, if any part is free from tithes, a prohibition lyes for the whole: if for part of the action, though the leſſe part, 11 H. 4. 8. jurisdiction ought not to be to the Court where it is begun. It ſhall be outed for all. A bond is made upon a uſurious contract for part, all ſhall be avoyded. If my Counſell labour jurors, hee is a mayntainer *ab initio*, even for his Counſell. Husband and wife do vary in the declaration of uſes for the particular eſtate as for life, and concur, as to the fee it is void for all. Divers Covenants in an Indenture are void, be- In 33 Eliz. Caſe *Paramor* and *Robinſon*. 22 H. 6. 6. 2 Report Caſe *Beckwith*.

cause it is concerning a grant of an office contrary to the statute 5 *E.* 6. and one Covenant therein is good yet the bond to performe Covenants is void for all. Superstitious use intermixed infects all the good, so covine.

1 Report. 82. *Cal. Colshill.*

3 Report 113.

28 *A Conjunctis ad divisa male arguitur*, as the Ordinary may take a refusall by all the executors, *Ergo*, of any is false. One is heire to husband and wife, *Ergo*, to the husband is a *non sequitur*.

9 Report Case *Benlose.*

9 H. 7. 19.

29 *Conjunctorum utrumque oportet esse verum*, and performed, as where the condition of a bond is double, so the confideration of assumpsit both shal be performed. A license *recipere & retinere*, both shal be done, lease is & bond to pay 10 *li.* rent if no restreint be of sowing & making woad, and after a Proclamation is to prohibit sowing of Woad, he shall pay his rent in this case. Rent is granted out of land in the tenure and occupation of I. S. though he had it all in Lease, if hee have it not in occupation, the land is not charged.

44 E. 421.

4 Report Case *Digbie.*

T. 32. Eliz. Rot. 431. Case *Sherwood.*

30 *Damnum absque injuria, is not punishable.* As if a Schoole-master erect a new Schoole to the hurt of the former Master; so if a new Mill is set up to the

11 H. 447.

22 his 14.

7 E. 3. 65.

pre-

prejudice of the ancient one to which all within the Town reſorted before, no action lies, ſo where arable is laid down to paſture, by which my ancient paſtures give not ſuch a rate as formerly, or agiſment not ſo much. 31 *Sic è converſo injuria abſque damno is not actionable.* A man is affied to a woman, and when the bains are publiſhed in the Church, another forbids them, ſaying, that hee hath another wife, which is falſe, this is *Injuria abſque damno*, becauſe he may compell her to marry him being affied. I may enter into your cloſe, and put out Savages, or your own cattle out of your corne, which have eſcaped in by your own fence. Trin. 5. Car. Caſe *Ap-Iohn* Michel. 12. H. 7. Keb. 2.

32 *Deus & natura ferenda.* If the water change his courſe, and run upon my Land, the common road ſhall be there as before. 22 Aſſ. 93.

33 *Dictum partis, is not excluſive taciti dicti legit,* Leſſor Covenant Leſſee ſhall have fewell by his aſſignement, he may take it without aſſignement. A rent is granted to diſtrein for this by the Baily of the King, yet he may without him. Dyer 19. 44 E. 3. 18. 40 E. 3. 10.

34 *Disjunctorum ſufficit alterum*

esse verum. It is pleaded the Bishop & his predecessors have used to grant such an office, *Tali personæ, sine personis* as he pleaseth; this is no affirmation that hee had granted it to more then one, so that issue can be taken upon that, but the plea is true, if he had granted it to one onely.

10 Report 59 Case *Evesquesarum.*

35 *Distructio facti, shall be eodem modo quo creatio.* A specialty must be avoyded by deed, an use declared by Indenture shall not be altered but by indenture, yea, though but in abatement as resceit of parcell upon a deed shall, not bee admited without deed of it, otherwise it is where matter of fact intervenes, as in covenant before he can have an action; so in case of a rent because of distresse is to be payment is a good plea without deed, and so is it there, though he bring a Writ of Annuity, *quod nota.* A man is bonnd he shall not occupy my land in D, I after let it unto him, this is not to purpose to save his bond without writing: and yet matter in fact wil aid an imperfect writing to make it good, as where an Acquittance was pleaded to a bond, and upon sight of it, it reherses it was money due upon Purchase of Land now by an Averment that this

7 E.4.15.
5 Report Case, Com. *Rutland.*

35 H.7.10.

21 H.6.33.
6 Report Case *Blake.*
5 H.7.33.

this bond was taken after the money due for the purchase, and agree in the summe, by this the Acquittance is helpt. 3 H.7.14.

36 *Dictum partis, which is no more then dictum Legis operates nothing at all.* Lease is for life, and the Lessor grants the Rent to A. for life, in whose hands so ere the Land shall come, this is no more then for the life of the Lessor. A gift is to two of land, and *uni eorum diutius, viventi*, they make partition and the one dyes, the survivour shall not have his part by these words, and *uni eorum, &c.* which is no more then the law would have said. A bond is to do such an Act (if the law permit) its all one, as if it had been to doe it absolutely: see 9 *Report, Flowers Case.* 4 *Report Case Burrow.* 2 *H.*7.9. *aliter casu.* As a man charges his executor to pay his debts, by his Will by these words, the debtor may sue a man in Court Christian, *quod quere*, by the allower of this book. A bond to infeoffe A. if be please, though the law says as much that he cannot be infeoffed against his will, yet it hath this operation, to alter the law in this, that the obligor is not bound to make this feoffment till A, signifie his minde, &c. The 26 Ass.38. 30 Ass.8. 12 H.8.6.

Statute 21 *H.*8. ſays, that he who takes a ſecond Benefice, the firſt ſhall be void, which the Eccleſiaſticall law ſaid before, yet this operation is by this expreſſe ſaying of that Act, that it ſhall be void without notice, where value is above eight pounds. *Vide* 17 *E.*3.7. *Dyer* 46. & 264. *Perkins* 105.

38 *Dominus & Servus, Judge and Miniſter, Subject and Sovereigne, Idem non erit, ſo Judge and party.* A woman is Guardian of the Fleet, and takes one of the priſoners to husband, this is an eſcape. If one hath a Benefice and is made Biſhop of the ſaid Dioceſſe, the Benefice is void. He which is Juſtice of the Peace is made Sheriffe, the Patent of Juſtice determines. A man hath an Annuity for ſervice to the Prince of *Wales*, he is made King, the ſervice ſhall ceaſe he is no longer Prince. Remembrancer is made Baron of the Exchequer, this cauſes his Office to ceaſe. So one ſhal not be Judge of the Kings Bench and Common Pleas. *Perſey arraigned an aſſiſe*, with other Plantiffes, and after hee was joyned in Commiſſion of aſſiſe, and ruled that no proceeding can be upon this Commiſſion. A Charter to hold,

Plo. *Plats* caſe

5 *E.*3.

Plo. Sir *Tho. Wroths* Caſe. 5 Eliz. Dyer 227.

37 Aſſ.3.

Plea,

Plea, *licet ipsemet sit pars, &c.* Is not good if there be not words to make another Judge when such a Case happens. A Constable may apprehend him that breaks the peace upon himself, but that is because it is an offence to the Crowne more then to himselfe. 8 H.6.10. 5 H.7.6.

Sheriffe is Judge in redisseisin yet hee himselfe returnes the pannell, so Judge and Minister, but the reason is, because he is made Judge by Statute, not as the Sheriffe, but a person described by this name. Kell.85.

By the Civill Law a Judge may punish an injury to himselfe by imprisonment or mulct, *Sed si pars verberibus aut capite mulctanda est propter injuria atrocitatem abstinendum est.* Boden 309.

A Writ of Error in the Exchequer is directed to the Treasuror and Barons, comanding them to have the Record before the Treasurer and Chancellor, and good. Institutes 4. 105.

28 *Dignior dat nomen rei, & regulabit eam.* A grant is of the Office of the Kings Tennis Court, &c. The play of the Houshold is included, and that onely gives the name. Where speech is of I.S. it shall be taken the father and not the son. Where speech is of a Will, it shall be intended 8 Report Case *John Webb.*

the

Dyer 314. the laſt Will where more Wils are, &c.

40 *Duty once diſcharged is always diſcharged.* The Ordinary once refuſes
10 E.3.26. a Clerke for inſufficiency, he is not bound to take a ſecond examination of him.

41 *De non exiſtentibus & aliter exiſtentibus, quam lex vult eadem ratio.* If
44 Aſſ.6. a Record is removed into a Court, but not by due proceſſe and courſe of law, its all one as not removed.

42 *Equipollentia habent eundem in lege vigorem.* A Writ comes to the Sheriffe to arreſt A. which was in his cuſtody
5 Report Caſe Froſt. before, and upon the eſcape of him an action upon the Caſe is brought, and declares that hee was arreſted, &c. *& bene.*
16 H.7.16. A Writ is to the Sheriffe, and hee returns that *virtute precepti*, he hath done ſo and ſo, and bene and equipoll, *virtute brevis, &c.* In a Writ it is ſaid, *quam clamat eſſe, jus*, this equipoll fee-ſimple, and therefore if in the following part of the Writ he in-
39 H.6.58. ſtance in a leſſer eſtate, as *ex dono* for life, or, &c. The Writ ſhall abate, *Vide Plo.* 542 555. *Dyer* 171.203. 17 *E.*31. But note this *exception to this generall rule*, that words of art ſhall not be ſupplyed by equipollent words, as voluntarie, *& ex malitia*

tia præcogitata interfecit, is not ſufficient in Indictment of murder, but the word *murderavit*, muſt be. A Writ againſt M. late wife of *Thomas Com.* A is all one as if he had called her Counteſſe of *Arondell.* 9 Eliz. 261. 2 H.6.11.

43 *Eadem ratio, Idem jus. So Bracton de ſimilibus à ſimilia eadem ratione procedendum.* The ſtat. which outs *non clayme in fines*, by reaſon of wars, takes away alſo *non claime* in a Writ of right, for the ſame reaſon is. &c. Plo. 59, & 164

44 *Expreſſum & particulare facit ceſſare tacitum & generale.* In this notion its ſaid a deed is a private law amongſt parties to it. By the word demiſe aſſignee of a leſſee for yeers ſhall have an action of covenant if he is diſturbed, but if there is an expreſſe covenant in the deed, that the leſſee ſhall enjoy the houſe demiſed, &c. without eviction of the leſſor, this ſhall reſtreine the covenant to the leſſee himſelfe. An Abbot brings treſpaſſe againſt the Parſon of C. and declares of cutting trees, *ad deteriorationem Eccleſiæ prædictæ*, though every Abbey is a Church, yet becauſe it is not named before, this refers to the Parſon which was named, and ſo makes 28 H.8.15. 4 Report *Nokes* Caſe. 18 E.2.ff. 6 Report 82.

makes the Writ insensible & abate. A man devises land to his eldest son, the remainder to his younger son, the remainder *proximo de sanguine* of the devisor, the eldest shall not take by these generall words, but any other not named before. *A.* hath two messuages, and demises that in D. and all his land in S. to I. S, the messuages in S. shall not passe. *Exception.* Note, where that the expresse is against the nature of the estate, as a gift in tayle, and an expres clause is, he shall not do waste, or suffer a recovery, or that he shall hold of the Lord Paramount, these shall not crosse the implicit *dictum legis*, in those severall particulars, and it is also in things inseparable. As Warranty by dedi is not destroyed by expresse Warrantie. *Sic regula fallit in casu*, the thing is inherent to the estate, as covenant expresse is the lessee and his executors shall repaire the house demised, &c. This shall not excuse the assignee who by implyed covenant in law adherent to his estate, is tyed to repaires, *except also* in case of matter of record this, though implicit will controll the expresse act *in facto*, as a woman enters into her joynture, & then brings a writ of Dower.

Milk in Iac. c 9. Casu Perriman by Bridgman.

Ibid.

21 H. 6. 14. *Perkins* 660.

6 Report Case Sir *Anthony Mildmay.*

2 E. 4. 5..

7 Report Case *Nokes.*

5 Redort case 23 *Broughton.*

5 Report Cap. *Vernon.*

So

So where the expreſſe act is vaine it ſhall have no ſuch operation. *See Dyer* 376. *Kell.* 123. *Doctor and Student* 94. And ſo it is alſo where the expreſſe act or word is additionall, and not contradictory of the firſt, as a deviſe is to pay ten pound rent to *A.* and if it is behinde ſix weeks, &c. that *A.* may diſtreine, this ſhall not avoid the entry upon the condition if broken, but it is variety of ſecurity for this rent. So where that which is but ſecret is dehors, there both may ſtand without the one outing the other, as bloud may be averred to have beene the conſideration to rayſe an uſe mentioned in an Indenture, though money only expreſſed within the deed.

18 Eliz. Dyer 348.

1 Report Caſe *Mildmay.*

46 *Exceptio firmat Regulam, conceſſionem, &c.* A man holds by homage, eſcuage and rent, the Lord grants the rent *cum pertinentiis*, the *Seignio.* doth not paſſe by this grant, but if he had ſaid (excepting reliefe and eſcheate) it was doubted. Common is granted for all cattle excepting hogs, this exception inlarges this to goats, &c. *A* man grants all his trees excepting payr-trees, apple-trees, now paſſe, which otherwiſe would not. The ſtatute of 23 *H.6.*

29 Aſſ. 20. 23 Incidents 24.

14 H.8.1. 2 .2.K.2.

H.6. speaks only of Sheriffs, yet because in the end of the statute there is an exception of Guardian of the Fleet. It is holden all other Guardians are included, as well as Sheriffs. But note, *fallit hæc regula*, where the exception is idle. And therefore though the statute 5 *E.6.* hath an exception that ingrossing of salt shall not be within that statute, any ingrossing of victuals, yet, *non sequitur*, it is victuall within any statute, for it is *condimentum* onely. And such clauses are put in to satisfie ignorant Burgesses; rather then for necessity, so in the statute 43 *Eliz. cap.* 1. there is an exception in that statute, which provides against alienations to the King, in case of Ecclesiasticall persons it follows not, therefore that other persons upon whom a disability was by law before to alien as infants mad men, &c. May now give away their estates, because Ecclesiasticks are onely excepted.

13 Eliz. Case *Yastley.*
11 Report 74.

Michael. 7. *Car. in* b. *Roy. Information.*

47 *Ætymologia verborum non præbet firmum argumentum.* And therefore to argue from the word joynture of a woman, that therefore it must be a joynt estate with her husband is a fallacy, for it a good joyntute though the estate be to her

Dyer 340.
Institutes 177.
9 Report 27.

her ſelfe ſole, yet ſuch arguments exhibits ornament in the diſcourſe, where it is agreeing with the law.

48 *Exitus acta probat.* The copying out of a Libell proves as evidence that he did publiſh it. The tenant is diſtreined without the meſnes fault, yet if hee after does not what the law requires, as putting his own beaſts into the pownd, for to free the tenants beaſts, the diſtreſſe ſhall now be ſaid in his default. *See 9 Report's, Caſe Meriell Treſſam.* And *vide*, the Caſe of Eſtray, and how it ſhal be demeaned that it prove not tortious. So in thoſe caſes of liberty given by law, as to come into a Tavern to drink, and he take away a piece of plate, this ſhews the act of comming in tortious *ab initio, &c.*

8 Report Caſe Lamb.
7 E.4.4.
9 Report 11.
8 Report 146.

49 *Expoſitio verborum. Averia* is any live thing as fiſh, hens, capon, &c. *Aut*, albeit it is a disjunctive adverbe, yet in the Kings caſe it leaves his genuine ſenſe, as where he grants land, &c. *Qua quidem terra concelata, aut reditus ſubſtracta, &c.* If the land is not concealed, though the rent is ſubſtracted, and ſo the disjunctive, *aut*, is performed, yet the land paſſes not. *A, ab, abs. Ab oft abis Trin.* is the laſt

V.lib. entryes 138.
21 H.6.39.
11 Report 113. Caſe *Hugh Vaughan.*

21 E. 4. 39. last day of the foute, *à festo Paschæ*, muſt be ruled by the Canons, *Abathia*. In *Abathia*, this extends onely to the Precincts of the Cloſe of the *Abbey*, and not to all the

19 Aſſ. 55. poſſeſſions of it. *Charge*. *A* man covenants to free a purchaſor of all charges upon the land, this extends to a poſſibility of a term, which yet is no title or right, *ante*

10 Eliz. Dyer 262. no. lib. entrey 384. *hac uſitate, &c.* Note in a ſubjects caſe theſe words, Will reach higher then in the Kings Caſe.

Circiter. Is an incertaine time, and therefore in caſe where certainty is requi-

Paſ. 28. Eliz. Caſe *Farrer*. red, it is ill in pleadings, &c. and therefore *Circiter* 21 of *Feb.* may be as well be afore

21 E. 4. 52. lib. entrys 152. the day as after. *Citra, infra. Circa feſtum. ſic ante feſtum*. Theſe are all before

Mich. 13 Eliz. b. 307. rot. 1330. the *Vigils* of the Feaſt, or in the Vigils at the leaſt. *A* bond is made to ſtand to the arbitrement of I. S. to be made *ante novum diem* of *October, &c.* The arbitrement is well made any time before mid-

9 Eliz. upon Bendlf. night of the 8 day. *Citra*, 50 yeers laſt paſt, was rejected becauſe unuſuall, for the

9 Eliz. per Gawdy and Dyer. pleading is *infra* 50 yeers, &c. Condition of a bond is to pay ſo much mony by *Michaelmas* next it ſhall be before the day. *Competent*. as a competent Benefice, the

meaning of this word is to be found out by the annuity is to cease when such a Benefice is provided, and not in reference to the persons quality to be provided for, as if the annuity was forty shillings *per annum* to the Chaplain of the King, till provided, &c. Of a competent Benefice ten marks *per annum est*, adjudged competent in this case. *Consueta*. It is taken for a thing anciently, used albeit now at the present it is discontinued &c. 6 Report Case *Molins*.

Discretion comes of *discerno judico*, so Jurors put themselves in discretion of the Court, that is, upon the judgement of the Court in point of Law, it is taken for that act of the Judge arises in case of extremity of Law, and amounts to as much as if he had said that the Judge shall doe according to the Law and right reason, when it's said in Statutes, &c. that hee shall doe according to his discretion, See 27. *H.*8, 25. *Fitz James* discretion mentioned, see 10. *H.* 7. 29. where it's taken *pro concilio*. 8 H. 4. 12. 5 Report Case *Rooks*. Vide Plo. 83.

Donque, *then tunc* a license is made to goe over sea, proviso if he resort to fugitives, *then* to cease he breaks the Covenant, *then* here is expounded, for thence

2 Eliz. Dyer 177. P. 5. Car. Case Mason.

forth and not *ab initio*, action upon the case, consideration is *quod tunc* he deliver a horse, &c. It's well done any time of the day after.

Plo. 192. F.n.b. 194.

Demise signifies not onely the originall Lease which is made to the Lessee, but the relinquishment, grant or assignement of any thing, as in the Writ, in the *per*, it is said, *cui* A, this demise in case of fee simple granted.

8 Report Case Pexall. Register 125.

Et, This conjunction in our Law, hath somtimes the sence of *vel*, *& sic è converso* horrible *and* enormous taken for *or* enormous. A bond is upon condition, if he pay part it shall be void, and also upon condition, that if hee suffer the Obligee to enjoy such a Mannour that the bond shall be void, the performance of either of these causes will avoid the bond, which prove *and* or *&* is taken in the sense of or, A rent is reserved to the Lessor, or his heirs, this rent is good to himselfe, and

9 Eliz.

5 Report Case Mallery.

or is not disjunctive here. A man devises Land to G. S. and if hee die before 21 yeers of age, or without issue, to remain to a stranger, he dies before 21. but hath

Eliz. 20. Iac. in b. R. cited. per Dod. I.

issue, adjudge this word *or*, shall be taken for *and*, and both must fail, otherwise he

shall

shall have no benefit of the remainder in this case, See *Plo. Manxels* case, *fol.* 5. *Bene* 4 *Report*, *Ognels* case, and 10 *Report*, *Vaughans* case, cited in *Legats* case, *Institut.* 96. 8 *Report Foxals* Case.

Expiration, is properly by efflux of time and differs a fine *vel.* Plo. 198.

Esteem, or being. 1 these words will extend to future times, and are not tyed always to the present tense. A man deviseth his land shal go to the next of bloud *(being males)* It shall be construed in the future tense, that shall be males, &c. 27 H. 8. 17. 19. 16 Eliz. Dyer 333.

Exactionibus, is all things in action, and as large as Demands in a manner. 11 H. 4. 7.

Est & fuit. Sometimes taken in the same sense, as if maintenance be layed in a plea, *quod fuit*, betwixt such and such, in law its taken for which is. 8 H. 6. 27. 10 H. 7. 17.

Eviction. A man is bound, the obligee shall enjoy such a house, or, &c. without eviction. Pursuit in Chancery and a decree thereupon, &c. is no such eviction to forfet his bond. 5 Report *tempore Eliz.*

House. A remaynder is limited to the house. In law the family, and the chiefe and most worthy or eldest of it, is meant. 16 Eliz. Dyer 333.

Horrible and enormous. *Illud unus non*

Register 125. F.n.b.185. *dicitur* enormous, if mayme, &c. is not by it. *Vide Stat. W.2.cap.29.* hath the word.

F.n.b.198. Institutes 1. 369. *Incontinenter & immediate, is as much as eodem tempore.* And therefore *lit.702.* says if disseisin be and a feoff made *Incontinenter garr.* created upon that is *garr.* by disseisin. See 6 *Report* 11. there its expounded by reasonable time. A bond is conditioned to pay plantiffe, and no time limited, the law says it shall be incontinently payed, now this in legall construction is inconvenient time, and so it seems shall it be, though the party himself sayes in expresse words, hee will pay the money incontinently or presently. If no heire be at the time of discent of land, but one is born with in an houre after, this is not presently as to make a discent to take away an entry and yet hee shall have it as heire. A man takes base money in payment and discovers this immediatly, yet he cannot refuse this, having once accepted of it. It is said where a deed is absolute, and a defeasans is delivered immediate, it is good and all one as if it were within the deed it self. Covē is to deliver cloth & that immediatly upon the delivery of such cloth to pay him 10 pound, the cloth is delivered at noon, the other

39 H 6.10. Institute 1. 208.

5 Report Case *wade.* 30 Ass.11.

18 E.4.20. 21 E.4.53. *per Sylyard.*

other hath all the day remayning to pay the money. Immediatly sometime is by good construction, observing all incidents to such an act &c. to be done. See *Stat. Winchest. & 27 Eliz.* of immediate notice, and action *Burnel* the same sence *ut hic.* 7 Report Kens Case.

Infra quatuor Maria. is taken to be within the Realm of *England*, and doth not fetch in or intend *Scotland*, &c.

Inhabitant. Resiant, Commorant, Conversant, the genuine sense of these words are very necessary to be known, by reason they are frequently used in severall statutes, as in that of election of Burgesses to the Parliament, 1 *H.* 5. 23. *H.* 6. and in the statute of *Rogues*, &c. The originall in the Greek is *συνδιατρίβω*, which is, *properans tem Commorari, apud aliquem morari*; and in *Buckleys Case, Plo.* the word in the statute *Resident* is in the Record and pleading of it in Latin, translated *Commorans, vel Conversans*, the first comes of *morando*, which signifies dwelling for a time, or to sojourne, and it is rather loytering then habitation. *Conversans* is to haunt much in a place, the originall imports to abide for a time *versari in acie*, and yet note the Institutes 1. 107.

word

word there *Resident* is in the record *Commorans* and *Conversans*. The word Resident comes of κοθίζω, *resideo*, and imports as much as to light or to sit down as a bird after her flight, which may aptly be applyed to Rogues, but what time will make resident is darke yet by these expositions, but it seemes a small time will do it, in *French* its neerer our law sence, *assis locatur idem cum assiduitas*, which intimates that such a one will continue in such a place for the time to come, then that he hath been long there before. The condition of a lease is, that the lessee shall inhabit and be resident upon the land during the terme, if these words during the terme had not been in, it is adjudged that the abiding a small time there will serve to performe the condition of abiding and resident. A man hath his family upon a house or no family, but occupies lands in Dale, the first is said a Resiant, the second an Inhabitant in our Law. Suit reall which was better *royall*, is said due of the body of a man, because *resiant* there within the Hundred, and note no certain time is limited in such case, for if he have been there three dayes he shall attend. A Charter is granted

Plo. Case. *Colthirst.*

Ibid.

5 Report Case *Iefferey.*

45 E. 3. 23.

granted that Inhabitants ſhall have franchies, it ſhall not be extended to fugitives, as this book ſaith, &c. See *Fitz-Herbert N.B.* 160. A ſaith that a man ſhall not be diſtreined to come to a leet where he is not demurrant and converſant, if a houſe is in two Leets, he ſhall attend that where his bed is, for there hee ſhall be deemed moſt converſant. *Vide Fitz. N.B. ibid.* in the Writ for diſcharging a man to come to a Leet it is, *illi qui moram non fecerint*, ſhall not be put *in juratis*, *&c.* by theſe reaſons and authorities you ſhall better conceive the right ſence of theſe kinde of words, about which ſuch various opinions have been in Courts of Record and Seſſions in the Country, &c.

Inſtitut. 2. 122.

In apud ad, *de*, *&c.* all theſe have the ſame ſence in ſeverall caſes. Treſpaſſe upon the ſtatute of 6 *R.* 2. for intruſion into the Mannor of D. *apud D*; it is as much as in *D.* and the *venire facias* ſhall be of the Town of *D.* yet the Indictment was for an affray *apud Eccleſiam de* D. and it was doubted if good, but it ſhould be *in Eccleſia*, otherwiſe by the word *apud* it may be without the walls, and the ſtatute is penall and the word *in* the Church,

9 E. 4. 31.

P. 36. Eliz. *Capt. Knevit.*

&c. A grant of a rent charg *percipiendum in Manerio de Dale*, and *apud Manerium* and both good. *Assumpsit* was to deliver goods in such a Port, and in pleading hee says, *ad tale portum*, its sufficient, so where its said such a thing shall be done *in festo*, its as much as the first day of this feast, and shall not be deferred till the *utas* of it. A Writ is directed *Coronatoribus in Com.* It is as good as *de Com.* And so abjuration pleaded *coram Coronatoribus in Com.* was holden good contrary to the opinion which *ex subito* hath beene taken by some.

10 E.4.8.
41 E.3.16.
Hill.33.Eliz. *Keisers* case.
21 E.4.52.
F.n.b.245. Vid.lib.entrys fol.1.

Interest, any profit as Common, &c. is interest.

Dyer 185.

In manibus, a man devise all his tenements *in manibus suis*, and hath a reversion upon an estate for life, this shall passe for the word denotes onely a thing in my subjection and power.

34 H.67.8.

Inde imports all things spoken of before as thus, *Si judicium inde redditum sit, &c.* this is to be taken upon the whole record, &c.

Dyer 291.

In rerum natura, hee which is dead in law, as Monk, &c. so he which is out of the Country where, &c. is in law said, not *in rerum natura*.

18 Eliz. Dyer 349.

Ipso

Ipso facto. Such a thing shall be; hee which draws a dagger, &c. shall be excomenge *ipso facto*, it is doubted if it shall be without sentence or proof, but the statute of *Henry* the eighth, which sayes, hee that takes a second Benefice, &c. shall be *ipso facto*, or *ipso jure privatus* of the first, this is without sentence. 23 Stat. E. 3. Dyer 275. 4 Report 79. 75.

Juxta. The thing may be twenty foot remote from the place to which its said *Juxta. Juxta Hull.* This imports the place is another then *Hull*, and remote from it. 19 Ass. 6. 14 Ass. 8. 45 E. 3. 3.

Infra, is all one with *Ante.* As to pay money *infra Festum Nativitatis Domini*, is before it. 21 E. 4. 63.

Maereneum. Is this timber which hath bin part of a house, or els *aptum ad domum*, seems framed for such a purpose, yet see *ib.* 96. It is used for timber in other building. In the Dictionaries it is written *mereneum*, *& est idem quod tignus*, timber to build with. In old French *Mareme* Latin *Mareneum lignum ædificatorium*, and its said a Norman word. Register 94. Institute 3 97. Institute 4. 307

Meniall servant. Is hee which is employed in the house for to serve the person 22 H. 6. 19.

of

of a man. So old book entries, *fol*, 434. of *servus familiaris* for meniall servant.

F.n.b.197. *Nuper est expound le jour ante le mort de Auncestor quod nota*, no long time is required to this.

37 E.3.16. *Pacatione.* An old word used for a release, as where its said ten pound was payed *in Pacatione* of a hundred pound, *Vide* old *Magna Charta* 153. the word for payed.

F.n.b.93. no. entrys a. & 109. 9 Report 56. 21 H.7.38. *Pratextu.* Is used in law for reall and good matter and of equall force with *virtute cujus*, or *ratione cujus*.

Prima & proxima. Where it is said the jurour who hath lands neerest to twenty pound, &c. Is not intended nineteen pound, but the neerest to twenty pound till it discend to forty shillings. I grant one twenty pound at the birth of my first son, and I have a son at the time of this grant hee shall not have the twenty pound till the birth of another son.

12 Eliz. *per Harperum.*

30 H.8. Dyer 43. *Pacifice.* I am bound you shall enjoy acre *B. pacifice*, *&c.* albeit hee be distreined for issues lost, this is no breach of this bond.

Pro. The sense of this word is not to have one thing for another, but the thing

it

it self sometimes, as if I promise to content your, *pro granagio*, this is taken that I shall pay the very granage it selfe, and not money for it, &c. Dyer 352.

Forfeiture of all a man may, this in law is land, goods, and body to be imprisoned, when such expression is in a statute, &c. Institutes 394.

Puer. Comprize female as well as *male*, *maxime* in the Dative case plurall, 30 *Ass.* 47. 9 *Report* 72. Dyer 337.

Nos. Vos. Is *stylus aulicus, sed non antiquus*, and intimates, *quando Princeps loquitur ex curiæ consilio*, and it is not to be found in all the Scripture given to any Prince or single man, and upon like reason it seems, Bishops used it, and the Chief Justice of the Bench, *coram vobis & sociis*, but because it was given to a Sheriffe in a Writ, thus *præcipite I, S. &c.* the Writ was abated. *Parens in Genesin*, 272. 29. E. 4. 44.

Permittere. Imports meer passive, and he that is bound *permittere* onely need do nothing, and violence by him is to have advantage of a condition by which a breach is, will excuse as if the bond is that hee shall not permit A to inhabit in such a house, and the Obligee him put in, &c. he who is so bound becomes a bankrupt, by Dyer 255. 35 H. 6. Fitz barr. 261.

which

with the house is sold, and another is put in, see whether this breaks the covenant
12 H.8.6. 17 E.4.2. when hee hath done an act by which in law the breach follows, that the other cannot dwell there. *Si lex permittat*, is if by any licence the thing can be done, or dispensation after then it shall be done, &c.

Fan.b.41. 3 Institut.182. *Res* is a good word for goods and chattels, and goes to corporate and incorporate things.

15 E.4.15. *Sufficienter*, a man is bound to serve in *Normandy*, *Sufficienter*, is with armour, &c.

Sure estate, a man is bound to make a
11 H.7.7. sure estate by force of this word hee shall free it of dower, and yet the estate may be sure without it.

Similiter pro ut, &c. Where Jury
21 Ass.14. 21 E.3.56. findes the homage did *similiter* or *pro ut*, the Defendant hath pleaded, &c. that goes to time and place and other circumstances as well as to the matter it selfe. *Trin.* 33. *Eliz.* Case, *Barnes.*

Predict. This word hath various, effectuall operations in our Law, by some books it is said of as great force and efficacie, as if the words themselves to which it refers had been expressed at large. A *Cessavit* is

is brought and declares of a tenour by homage, Rent, &c. *Et quod de prædictis serviciis Cessavit, &c.* This refers onely to that service, of which in Law properly cesser may be. *Prædict* is not necessary where the matter appears, though it would have made it more cleer. It will supply an averment to reconcile differences in the Record as *Codred* is in the beginning of the Plea, and after it is *Cotreid prædict*, this helpes the varience. An Indenture is said, dated 23, *December*, and after it is said, *per* indentured *prædict. datum.* 23. *November*, the mistake is helped by the word *prædict*. The quality of a thing shall be well helpt by this, and inforced, as where it is mentioned that land was conveyed which he had by discent from his father, mention after, *de terris prædictis* will include all this. I surrenders copihold to the use of A. for life, the remainder to I.S. for life, the remainer to the heirs *prædicti Johan*, & resolved it shall be the heirs of the later I. S. the purchasor, and not of himselfe. Assisse is against M. the Abbot *de* H. and the pone was predicted *Abatissam*, with one more, and the opinion that it shall abate, *vid.* 8. E. 3. 64.

35 H.6.31.

6 H.7.

10 H.7.5.8. Report 57.

Trin. 23. *Eliz.* Case *Graye.*

Pasch. 23. *Eliz.*

26 Ass. 11.

Pa-

Paratus, paratus, respondere, within the Statute *W.* 2. &c. he shall be said *paratus* who comes at the time appointed by the Law, and not presently, as where a remainder depends upon a remainder for life, here he is in Law said *paratus*, if hee come after the others which are means and have made default.

32 H. 6. 2.

Expositio quorundam verborum & sententiarum in devises of Land. I. S. hath Lands in D. and also Rents, Court-Leets, dismes and common, and doth devise to his eldest Son divers *Lands* by *name*, and then devises to his yongest Son all his other Lands purchased free hold and copy-hold, and it was ruled because in the forepart of the will, all his Lands were devised to the eldest, the rents, tithes, leets, &c. shall by those words passe to the yongest son. A man devises all his living to I. S. and and judge his reversion shall passe. *Item*, I will and intend to devise my Land to A, this is a present devise of the Land *per opem curiæ*. A man devises the fee simple of his Land to his wife, and after her decease to his son *Thomas*, &c. shee takes for life the remainder to the son for life, the remainder in fee to the wife, but it is not executed

Trin. 9. *Eliz. per Dyer. Walsh & Gawdy, J.*

In 20 Iac. *in* b. *Roy* case, *Scattergood.*

22 Iac. Case *Fox.*

29 Eliz.

ecuted to make a title, her husband to be Tenant by the courtesie.

Et Cetera, &c. This will help in many cases in Law. In an action of trespasse, *quare bona, &c.* and declare of a bale of wood, and ruled it is not good because in the singular number, and the writ in the plurall, but if this expression &c. had been added, it would have made it good. Hill. 15. H. 1. *Keble.*

A Recognizance *in atteint* is, that if hee doe such and such things, *quod tunc, &c. per, &c.* by these particles, the condition of the Recognizance shall be perfected, which otherwise is not. Dyer.

Indictment is certified up to be *capta*, before such Justices *ad pacem, nec non ad diversas felonias & alia malafacta, &c.* &c. supplies the other particulars of the commission, but in the the same case it was ruled, that such an Indictment certified *capta coram, Justiciaris ad pacem*, &c. was not good, and doubted if it were certified to be presented *per sacramentum proborum & legalium hominum, &c.* and doth not put down the names of the Grand Jurie if it shall be good. Trin. 11. *Car. b. Roy.*

When a record is sent up in a Writ of errour, out of an inferiour Court, shews the *venire facias* was awarded, *ad recognoscendum,*

Trin. 11. *Car.* Case. *Hambleton in b. Roy.* At the Assize *Ebor. 9. Car.* by *Davenport* Chiefe Baron.

ostendum, &c. and sufficient without shewing the particular issue, an &c. added to a prescription made in ill, and the plaintiffe *non suited, super inde.*

Trin. 18. Iac. *in* Comm. b. Case *Londor. Vide* Chapter of *Southwell.*

Commodities, profits, emoluments, these words in a deed added to the land or Manor sold extend to such things which yield naturall profit, which an advouson doth not, and therefore it was resolved it extends not to an Advow appendant, &c. to passe that without expresse words.

7 E. 3. 24.

Sovereigne, In Law it is no more but the supreme of a house, or a Town, &c. So an Abbot is Sovereigne of the house, and *Clayden* the Marshall of the houshold, is termed there *Sovereigne*, in respect of the Gaoler and the command of such an one obeyed, shall excuse the subject or inferiour. Sovereigne of the Town shall pursue sellons, &c. this is the chiefe officer be it Constable, or &c.

28 E. 3. 11.

Register 44.

Subditus is one who is subject to the ordinary jurisdiction of another, as those under the Diocesan are said *Subditi* in the writ of consultation, and the word is used also for any neighbour or inferiour, within the distresse of such a Court, but in a strict sense it refers to the Prince, so *Boden, subditus*

Britton 19. W. 2 cap. 40.

ditus plurium principum quisque esse non potest. See *Dyer* 360. Its said that one of *Ireland* is subject of *Ireland*, and not of *England, quod nota:* and see *Calvins* case, 7 *Report*.

Miniments. A word used in Conveyances, it includes all manner of Evidences whatsoever, *quasi Muniments.* Old *lib. Entryes* 335. There it is said forger of false deed and Muniments. 35 H.6.37.

49 *Fictio juris neminem ledere debet. But ayde much it may, and this is seen in all matters where the Law works by relation and division of an instant, which are fictions in law.* A Constable takes one which had struck another, and then sets him at liberty, the party stricken dyes of this stroake, this is felony *ab initio*, but not to the prejudice of the Constable who suffered this escape. A feoffment is upon condition that he shall re-infeoff him, he grants a rent-charge, and the Grantee brings a Writ of annuity, now it is an annuity by relation *ab initio*, betwixt the Grantor and Grantee, but not to defeat the condition broken, *quoad* the Feoffor. A fine is levied, *sur render* the Conusee by fiction in law hath seisin in an instant to 11 H.4.13. 3 Report Case Butler and B. 30 E.3.17.

make this render back good, but to no other purpose to the prejudice of the conusor, for his wife shall have no Dower, nor shall this land be subject to any statute, &c. in which this Conusee was bound.

2 Report Case Lord *Crumwell.*

50 *Fortior est obligatio partis quàm legis.* A man is bound by obligation to pay his rent, he ought to seek the Lessor to pay him. A man is bound in a bond to repaire a house, hee shall do this against tempest, &c. and so also though it be ruinous at the time of the lease, which otherwise hee is not bound to doe. If the Lessor Covenant the Lessee shall enjoy the land demised pacifice, this extends to those, do interrupt him by wrong, whereby the word demise he is not bound.

22 H. 6. *Dyer* 33. 33 Eliz.

Dyer 328. 40 E. 3. 6.

51 *Fortior est provisio legis quàm partis.* The statute of *Gloceſter* which prohibits a man do no waste, it is expounded that he shall not permit wast, but if I be bound that I shall not do waste, my bond is not forfeited by waste permissive.

11 Eliz. Dyer 281. Doct. & Stud.

52 *Fortior est dispositio legis quàm hominis.* A man hath *interesse termini*, hee cannot this surrender, but if he take a new Lease *in præsenti*, this is a surrender of the old *interesse termini*. And upon this reason

ſon it is that conditions in law are ſo ſtrong, as expreſſe conditions. 10 Report 67. Litt. 378.

53 *Fortior & melior eſt proviſio Legis quàm hominis.* Parceners, by the law are to have equall portions of lands tayle and fee, now if one of them agree to take all her part of the tayled lands, ſhe may ſuffer by this partition. A man is ſeized of three mannors, of equall value, and takes a wife, and ſhee takes one entire mannour for her dower, which is charged with the rent ſhee ſhall hold it charged, otherwiſe is it if ſhe had recovered her dower, and had had a third part of each aſſigned to her. 1 Inſtitu. 378.

54 *Fundamento diſtructo cadit opus, & quare non admiſit*, is awarded, and afterward the originall record is removed by a writ of Errour, now the other fails thou; hit be diſadvantage to the King, who cannot now proceed for the contempt but by Green, if hee is attainted once for the contempt, the reverſall of the firſt judgement afterward ſhall not aid him to avoid the contempt *ut ſupra*, an exigent goes out for felonie, and after a pardon of ancient date to the exigent comes, and all things by the Law required are done, the M. 26 E. 3. placito 25. fol. 75. 43 E. 3. 18.

chattels are ſaved, an excommengement is for contempt of a letter miſſive from the high commiſſion, the contempt is pardoned, the excommengement is alſo *conſequenti*: Execution is ſued upon a Statute, and then the Conuſee makes a deſeaſance of the Statute, upon payment of twenty pounds, if it is paid, the execution ſhall be defeated, as well as the Statute. *vide.* 43. E. 3. 18.

P. 23. Eliz. 6 Report 13.

20 Aſſ. 7.

55 *Generale nihil certum ponit*, and is rejected in Law. A man is bound to deviſe all his lands in the tennor of I. S. in the Towne of D. the obliger may ſay, hee hath no lands there, ſo a man is bound to be *non ſuited* in all actions that he hath in the Common-pleas, hee may ſay he hath none there: otherwiſe if the condition be particular, as to be nonſuited in a *formdon*, &c. Inditement is thus, that A. is a malefactor or a common thiefe, it's not good.

2 Report 33. Caſe *Dodington.*

22 Aſſ 73.

56 *Generall words where they will helpe particular infirmities.* As *Scire facias* is a gainſt two ſeverall tenants, the Sheriffe returnes *Scire feci*, the two *modo & forma pro ut breve exigit*, now this which was joynt in the beginning of

the

the return is now ſeverall and good by the generell words *modo & forma, &c.* So where a Sheriff returns that *virtute brevis* he hath done ſuch a thing, and in the ſequel of his return are many imperfections, they ſhall be helped all by theſe generall words, *virtute brevis*: ſee to this purpoſe of theſe words *contra formam Statuti*, & what imperfections will be aided by theſe words; ſo by the words *ſecundum formam Statuti*, where it's ſaid they ſhall have the force as if the very words of the Statute, &c. had been punctually expreſſed. An information is upon the Statute of buying titles, and there is a miſtake in the record of the day of holding the Parliament, or in the ending of it, but becauſe the words *contra formam Statuti* were in the concluſion, that was aided in the miſrepetition of the date, or day of holding the Parliament, which was vain.

2 H.4.13.

34 H.6.

Stamford 81.

5 Report 7. Dyer 13. Eliz.

11 H.4. 4 Caſe *Barns* and *Hill* Michel. 7. Car. 3 in b.le Roy.

57 *Generall words in grants where they ſhall be reſtrained by particular words in the ſame clauſe, & contra.* A man hath a manner in O, and other lands not parcell of the manner, and ſuffers a Recovery of all, and declares by Indenture that the uſe of all his lands in O, ſhall be to the uſe

8 Report. 11 Caſe *Carter.*

of A, this shal not be of the Mannor which was particularly mentioned before. A. acknowledges a fine of the Mannor of D, with an advouson, and regrants the Mannor *cum pertinentiis*, the advouson shall not passe in this case. A Release to *Jo. S*, executor *I. D.* all actions now by this restrictive word executor no impedimẽt shal be, but that this release shall have an operation upon all the capacities of I. S. The Obligee grants to the obligor, that he shall bee discharged of the bond, and if he is sued upon it, that hee shall plead this as a Release: It is a release presently without expecting Suit, &c.

Temp. E. 1. F. title grants *per Barkley.* Judg. 13 *Car.* 19 H. 6. *per Ascue.*

21 H. 7. 32.

58 *Generale discendens in particulare sive Speciale, shall be ruled by that speciall.* A man grants a rent in the Mannor of D, *percipiendum* in 100 Acres, parcell of the same Mannor, or *distringendum* in 100 Acres, this rent is charged upon this 100 Acres onely, so a man releaseth all demands, *nec non* title of dower in the Lands of W. this curbs the generall word demands, and ties it to the Lands of W. onely. I. H, grants his Mannor S. in A. and B. where this extends also into C. nothing of the Mannor in C. shall passe.

8 Report Case *Altham.*

Dyer 261. 9 Eli.

9 Eliz. Dyer 261.

A

A man devises all his Land in D. and the Hamblet of I, this excludes that Lands in other Hamblets then I, shall passe though within the same Town, but note if the speciall is first put down in the deed and generall word after that the Law is contrary, as when one is made Deputy Steward to take a surrender absolute, *& ulterius facere omnia quæ ad officium ejus in hac parte pertinent facienda*, this enlarges his power, so that this Steward now may take a surrender conditionall, &c. *Vide 7 E.3. 10. bene* upon this rule.

Trin.26. Eliz. *inter Adams & Fost. r.*

59 *Hee that needs most let him blow the cole.* Upon this reason hee which is to have benefit shall do the first act. *Vide antea*, title *Act*, so where request is to be made, hee who is to have availe shall make it, &c. Detinue is brought of a deed of Release, the defendant garnish *B*, to whom this was made, &c. and upon shewing the deed, the seale was debrused, and the Plaintiffe would have had damages, and ruled no, for he hath no reason to complain of the debruser, &c. but hee to whom it was made, and let him blow the coal if he will.

29 E.3.31.

60 *Integra lex separat & individua.*

A Charter may be allowed for part, be-
21 H.7.29. cause it hath beene allowed in Eyre, and
disallowed *pro residuo*. In debt upon a
bond against two, the one acknowledgeth
the deed, the other pleads in abatement,
4 E.2. F. Tittle judgment 229. and it was awarded the Plantiffe shall
recover a moyty. So a judgment may be
reversed for part as a fine, for that it was
ancient Demesne was reversed for that
21 E.3.20. Dyer 291. part and stood good for the rest. And note
there is a speciall Writ of Errour to re-
move part of the Record, &c.

61 *Idem taken pro Simile*. So a limitati-
on *ad eundem usum* was taken *pro tali usu*.
Dyer 13. & 233. Plo. Case. Obligation is to pay 20 shillings at *Mi-*
chael. and the yeer following 20 shillings
Browning. & B. at the same Feast. It is taken for the like
feast. *Vide* 5 *H*.7.39.40.
Inconvenience, see after ward here fol. 63

62 *Indefinitum supplet locum universa-*
lis. A man is bound, his Feoffees shall
21 H.6.10. Plo.39. grant a Rent, or make a feoffment, all
ought to joyne in this grant. A man gives
bona sua in D. Its all one as if he had said,
omnia bona dicr, datum est partibus prædi-
ctis, its all one as if he had said *omnibus*
partibus, a Writ is directed *Coronatoribus*
E.4.1. *Lincoln*. Its all one as if he had said *omni-*

bus, and is not intended 2 of 3. The statute of *Winchester* is that the hundred shall answer for the body of the offendors, this is taken for all the offendors, and the taking of two or more will not serve the turn. See for the pleading of this Case onely foure or five of the Inhabitants are to be named in Certeine, &c. A tenant pleads that hee is no tenant of the Freehold, and issue is joyned upon this, and its found tenant but for part, and of the residue not, this is against the pleador. See 2 *R.*3.17.18. 6 *H.*7.15. 1 *E.*5.5. 27 *E.*3. 21. This generall rule hath severall exceptions and restrictions. As in case the non observance of it makes for advance of Justice, as a *tales*, *quales*, *&c.* shall issue in favour of tryals, though onely one of the principall pannell did appeare. See 12 *H.*4 *tit:* Certificate of Assize 4. And *Hobs* Case, *Institute* 1. Upon the same reason, *Verumagis valeat. R.*2. granted to the Abbot of *W.* that he and his successors shall be Collectors of Dismes granted *per Clerum Angliæ*, this shall be taken for that part of the Clergie use, to grant such dismes which is the Clergy of the severall

11 H.7.11. Plo.75.

7 Report 7. Case *Milborn.*

Mich.10. Car. inter *Lee* & *Smathers.* *Exceptions.*

10 Report *Denhams* case.

8 Report 56. 4 Report Case of *corporns.*

Pro-

Provinces. Prescription is that the Major shall be chosen by the Comminalty, by usage this shall be restreined to the principall of the Comminalty, &c. A Common is claymed to a Mannor, it is by intendment all times of the yeere, but yet its not so strong, as if expressed all times of yeer. See 30 *H.*6.2.8 *Report* 91.21 *E.*4.44 *Dyer* 186.21 *E.*4.44.5.6.

Trin.8.Car. Case *Bullock.*

59 *Ignorantia non excusat*, not folly, but a man shall have prejudice by this much. The Clerk mistakes, *debet pro debet* in a Writ, Ignorance is no excuse. If a man can *read* and *will* accept the declaration of the *contents* of a deed by one who declares it in a different manner, from that the truth in the deed is, *This shall not ayde him*, but he is bound by it.

Lit.261. Briton 62.

22 E.4.21.

60 *Inter æquales melior est conditio possidentis*. Upon this reason 'tis that hee that hath an estate by wrong, shall hold against all others who have no title. Often Mannors are conveyed to severall persons by one and the same Deed which of these happen to get the Deed may detaine it, where two severall persons have each of them power distinct to make a lease of such

2 Report Case *Thorowgood.*

4 H.7.10.

such Lands which of them leased it first shall stand. A Lord allows six Chaplains by his Letters Testimoniall all are presented to six severall Benefices, Pluralities the three first promoted shall stand. Two Attourneys reteyned conjunctem & divisem, the plea of him first pleads shall stand. A Ser eant at Law brings an Action against an officer of the Kings Bench, the Common Place shall have the priviledge, See 48 *E* 3.20.21. 13 *E*. 3. *F*. *Assize* 91. Where it is said that possession by halfe a day is not sufficient to gaine a freehold against him is a tort fesor, &c. and so titles equall.

4 Report Case *Drury*. 12 H.7 9.

61 *Iteration of a small offence will make it amount to a great one.* As if a Gaoler permit severall negligent escapes, this will grow to be in judgment of law as much and as high a crime as a voluntary escape.

39 H.6 33.

62 *Injuria propria non cadet in beneficium facientis.* A water runs upon the land of I.S. he stops it, by which my land is surrounded, I may enter his Close and debruse that which stops the water course. Lessee for yeers puls downe his house, hee shall not have the tymber was in it to re-

8 E.4 5.

edifie

edifie it, as he shall when its blown down: the same law is if hee cut downe trees hee hath lost his speciall interest in them for shade, &c. A man devises land to A. till a hundred pound levied and dyes, the heir enters & continues by four yeers in which by computation the money might have been levied, the Devisee shall have foure yeers more against him is heire. In a *praecipe quod reddat*, the tenant is essoigned at the *Grand Cape*, where he ought not to be this shall not turne to a discontinuance. One takes my goods by wrong and them offers to an Image, my property is gone, but if afterward these goods come again to the possession of the trespassor, I may seaze them out of his hands.

4 Report Case *Merlaken.*

4 Report Case *Edw. Corbet.*

6 E. 4 28.

34 H. 6. 11.

63 *In praesentia majoris cessat potestas minoris.* A Lord of the Parliament makes a proxy, and after comes himselfe into the house of Lords, though hee says nothing, *the power of the Proxy ceaseth.*

Institutes 4. 83.

64 *Laches may prejudice but shall not avale any man.* Tenant in tayle sells a hundred Oakes for twenty pound, the vendee delayes the taking of them till the vendor die, he hath lost them for ever. A man brings a *Formedon* against two, the one pleads

18 E. 4. 8.

pleads, *ne dona pas*, which is found against him, the other pleads Basterdy, if the demandant in this case do not pray his judgment against the first, till the other issue tryed against him which findes him basterd, he shall by this neglect lose the other moyty which he might have had. Custome of a Towne is after Corn and Hay, severed and carried away in such a field to put in Hogs, &c. if one will permit his corn to continue there where he had sufficient time equall to his neighbours, it is at his owne perill, and the other may put in *their beasts*, &c. as if the Corn had been taken away. A man hath five load of hay to be taken yeerly in such a Medow, if the grantee do not take their loads of hay one yeere, it is lost *for ever*, and he cannot take it the next yeer, for then perhaps he should take all the hay in that place which was not reasonable, and might put the owner without hay for that yeer.

15 E.4.27.

21 E.4.41. F. barr.209.

27.H.6.10.

65 *The Law avoyds Circuit of action.* Upon this reason tis that where a Lessor Covenants to repair and doth not, the lessee shall not be put to a suit upon the Covenant, but shall detcine so much money out of his Rent, &c. annuity is granted to

12 H.8.1.

A.

A. for which *he covenants* and grants to be with the Grantor in every place in the
8 H 6.13. County, &c. if he fail to be with him &c. he may plead it in barre of the Annuity, and shall not *be enforced to an action* of Covenant.

66 *The Law yields to necessity.* Upon this reason it is that in a Writ a verment that they are the same lands shall not be
6 E.3.41. admitted, because hee may have another
5 Report Cafe of Amendments. Writ, but in a fine upon release, it shall rather then the land shall be lost, and the ad-
7 Report Cases of discont. scilicet. vantage of the *fine auuld.* If there be not
38 E.3.25. sufficient to serve of a Jury, the tenant to one of the parties shall be sworne rather then fail of the tryall. The husband discontinue an acre parcell, &c. With the Advowson, the Alienee presents and dyes, the heir grants the Advowson now in so much
17 E.3.45. that the wife cannot recover this Advowson, by recovery of the acre, because of the severance of this from the acre by the grant he shall present without recovery of the advowson, as if it had bin severed at the
13 H.8.16. first. One cuts an Oke which fals upon the
6 E.4.7. land *of another*, now if he could not prevent this, he shall be excused to enter into this land and take it away. The same law

is

if beasts be driven by the high-way, and they run into the Corn, he may enter into the Corn to drive them out. In a *per quæ servitia* against a Prioresse, for that she is inclosystered shee shall attorne by her attourney. A man gives me leave to come to his house, *and after discharges* me again, if I continue there *afterward I am a trespasser*, but if the countermand was in time of a tempest, the law alters, and they may stay there untill it be over, *sed nota differentiam inter necesse & necessarium*, though in *Latine* as *Davis* thinks, *fol.* 12. they are used promiscuously, vouching the sentence of a *Roman* Senator, *Nihil magis justum quàm necessarium*, & per *Coke*, *Necessitas est lex temporis*. 10 E.4.7. 22 E.4.8. 43 E.3.8. 20 E.4.4. 6 Report Case Trollop.

67 *The Law will suffer a mischief rather then an inconvenience.* This word Inconvenience so much used in our Law hath the force of against reason *scilicet*, artificial reason perfected by use and experience termed *summa ratio*. And it is in truth when some maxime of the Law is shaken. A man priviledged in some Court is sued in *London*, and the matter is actionable no where but there in *London*, yet by his priviledge the cause shall surcease there. This the reason that Lit. 231. 238. Institutes 152. 38 H.6.30.

that a Feme covert or Infant shall not avoid *their fines* at full age, or after the husbands death. See. title Voucher in *Fitz.* 81.

17 E. 3. 79. 01

13 *H.* 4. 2. Matter upon like reason.

68 *Lex non cogit ad impossibilia.* This the reason a Corporation; as Major and Comminalty may do pety ordinary things without writing, for the *infinity* of them, so a Sheriffe he shall plead generally *ea ratione, &c.* because of the impossibility to do otherwise in all the severall businesse of his office. The statute appoints that in *rediſſeſin*, the Sheriffe shall go to the place and there shall take the inquest if now the *rediſſeſin* is of a rent which issues out of divers Lands in severall places, so as he cannot be at all at once. Its sufficient to take the inquest at one of them &c. because of the impossibility, &c. lease upon condition he dwell upon the land demised, and he dyes at the end of ten yeers, the lease being for forty yeers, yet his executor shall enjoy this tearm, because the condition is become impossible, &c.

7 H. 7. 18.

2 Ass. 23.

Michel. 37. 38 Eliz.

69 *Lex judicat de impossibiliter faciendis quasi factis.* So tenant in tayle suffers an usurpation, the issue is bound till the Church become void again, but if hee

had

had made an appropriation of it. In which case by judgment of law it wil never come void again in this case, hee may bring his action presently as if it were absolutely void. A Covenant is that lessee will leave the trees in as good plight at the end of his terme as he found them, and he cuts them down, an action lies presently for the impossibility to performe, see 5. Report Case, Sir *Anthony Maine* ruled upon the same reason. A man submits to arbitrement, and then repeals the authority of the arbitrator, &c. this makes all impossible to go on, &c. and is as much in doome of law as if he had broke the arbitrement actually, and his *bond is* forfeited, but *nota.* The Impossibility must be absolute, for if the least possibility remayne it alters the law, as where the condition was upon a feoffment to re-infeoff the Feoffor, the Feoffee is disseised, and then acknowledgeth a statute or takes a wife, &c. in this case at first sight in ordinary reason it is impossible he cannot make this feoffment, but hee must enter before by which the Land will be charged with these incumbrances, yet because the wife may dye, or he may procure a release of the statute be-

46 Ass. 4. *I. Neveras* Case.

Temps E. 1. F. Covenant 29. 7 Report 15.

8 Report case *Viner.*

2 Report Case *Iulius winington.*

fore the time of entry & refeoffment, therefore no such impossibility is in the case to amount to a breach of the covenant. So in case of trees before, if the *Covenant* had been of a *house in as good plight*, &c. which is out of repaire, and the tearm is welnigh ended within three days, in which a kinde of impossibility is to doe it, yet an action doth not lye till the tearm be wholy effluxed. *E contrario*, *The Law adjudges sometimes that is impossible to be done as actually performed.* As where it was enacted that a statute then made should have continuance till the King returned *à partibus transmarinis*, and he dyed there, this statute is now determined, as if he had returned. A lease is for yeers untill A. accomplish the age of 21, hee dyes at eighteene, this lease is determined as fully, as if he had come to one and twenty.

12 E. 3. Fitz. Tit. Covet. 2.

18 H. 6. 12.

3 Report Case *Berrafton.*

70 *Lex accepit voluntatem & diligentiam pro facto.* No place is limited where money shall be payed in the condition of a bond, if now the obligor happen in company with the obligee intending to tender him the money, and the other shifts away to prevent him, &c. It seems in this

8 E. 4. 1. per *Catesby.*

case

case hee shall be excused, because hee hath done his endevour. A man gives a Jurour money to embrace him, though it happen the verdict do pass against this man, yet he shall be punished for this, & the law was that if one assaile me to rob me though he did not, yet he should die for it. See *Frosts* Case 5 *Rep.* & *Ridgways Case* 3 *Rep.* & *Plow.* 22. *Exception* 2. *Nota*, this exception where the Condition, *Alt, &c.* is to be done to an estranger there, to do what in him is, will not serve, but it shall be actually done, and its nothing to have done *quantum in se est*. As a covenant is betwixt *A.* and *B.* that if *A.* upon the tender of a hundred pound makes him an estate, then *B.* shall release to *A.* *A.* is all times ready to make the estate *pro ut, &c.* but the 100 *li.* is not tender, &c. *B.* in this case is not bound to make any release. 28 H. 6. 12. Dyer 99. 23 Eliz. Dyer 371.

72 *Lex judicat de rebus necessariò faciendis quasi reipsa factis.* One erects a jetty above my house, by which of necessity the raine will fall and run upon my house or curtelage. Its lawfull for mee in this case to debruse it and pull it down before any rain have falne, all one as if it had falne upon the house. 4 Report Case Plowden.

72 *The Law judges of what may be done as actually done.* Upon this reason it is that the attornement by an Infant *in pais* is good, because he might have been compelled by a fine to do it. The Sheriffe may sell goods without any *venditioni exponas*, because hee might by such a *Writ have been compelled* to it. A Rent charge is payed twenty yeeres without acquittance, and after a Writ of annuity is brought, he shall be received to plead payment as to a rent because hee might have done so if he had issued for it as rent. An office is grated for *yeers, it is void* because this may come to an executor. Albeit an essoigne is not cast, yet because it might have *been done*, a jury shall not be *demanded the first day*. The King discharges all Intrusions, &c. and one hath entred at this time, yet because office was not found it cannot be said Intrusion, but resolved because an office may be found when the King pleaseth, it is all one in law as if it were found see 4. *Report Bevils case*, bin to this purpose. *Note, If a thing is in my Will to have, it is all one as in my possession*, so where it is in the will and power of a prisoner to escape, it is all one as if hee had escaped in judge-

9 Report Case *Conie.*

5 Report Case *Hoe.*

37 H.6.19.

9 Report Case Sir *George Reynalls.*

1 E.3.11.

11 Eliz. Dyer. 284.

10 H.6.6.

42 E.3.10.

ment

ment of law. He which is acquitted upon an *Appeal may* this *shew upon* an Indictment, but if hee do not so he shall have *no damages*. See 4 *Report Vernons* Case. Fitch. Coron. 432. Exception. 14 H.7.2.

73 *The Law will iudge of same things actually done as not done, & è converso.* Tithes are set forth *actu*, but re-taken by the owner, it shall be as if they had never been set out at all, so money payed to lose a morgage, and if taken back againe, it is as if not payed at all. One hath a protection, *dum moratur, &c.* Comes over to provide victuall, it is in law no comming to break the condition, *D'Itaque non redeat*, which is in it. A demandant enters into the land in question by disseisin to the use of another it is no entrie. Beasts escape out where the Lord comes to distreine as to him they are yet upon the land, and hee may take them, &c. one shall be said in possession of a Ward gone six houres before out of his possession. *Wades* case. 5 Report. Institut. 1. 13. 131. Institut. 1. 68. 3 Report Case *Ratcliffe*.

74 *The Law adiudges the same thing in esse, & non esse to divers purposes.* An estate in remaynder discends to a particular estate, yet if he be an Infant hee shall not have his age, nor be in Ward by discent of this remaynder, but shall be said in 9 E.4 18. 40 E.3.13.

of his first estate. A particular tenant grants a rent, & after makes a Feoffment or surrender which determines his estate, yet it shall be *in esse* to hold up the rent during the said estate. Two men are bound in an obligation of a hundred pound, and a recovery by judgement is against one of them, this dammes the bond as to him, but as to the other it is *in esse*. A man is bound in a statute, and is seised of a rent and before the extent he releases the rent, yet it shall be *in esse*, as to the Conusee. He in reversion infeoffs his Lessee for yeers to the use of I. S. &c. This will work a surrender by the law of the term. Yet by the statute of Uses it shall be *in esse*, and is saved. The Lord releases to his tenant being an Abot, who had purchased in Mortmain the Seigniory is extinct, yet as to the Lord Paramount it is *in esse*. Lessor grants a rent, and then accepts of a surrender, hee shall hold now charged with this rent presently, but if he had granted the reversion to a stranger who accepts of a surrender, hee shall hold discharged of this rent during the life of the tenant for life. See 9 *E.* 4 38. and 6 *Report*, Sir *Anthony Mildmays* Case of a rent to cease for a time, and to revive for another time. 1 *Report Anne*

5 Report Case *Archer*, & 30 E. 3. 6.

6 Report Case *Biggens*. 9 E. 4. 51.

7 Report Case *Lillington*.

F. n. b. 123. 34 Eliz. *per opinionem* Dyer.

Mayor Case, *simile* 5 *Report Hills* Case in a sentence after appeal it is *in esse*, as to the costs. *Vide* 6 *Report*, Lord *Abergavenies* Case, 9 *Report* Case, *Strata Marcella*, where its said those things are *in esse quia jure sunt*. Vouchee is tenant in law, but to some purpose, not to have a release to him, so tenant by courtesie who hath granted over his estate. Institutes 1, 273.

75 *Quod lex dicit factum est sic acsi, by the party himselfe.* This is the reason that in all dealing with officers, tradesmen, &c. they will declare that agreement, was to give them *tantum, quantum meruit*, & though no such agreement can be prov'd, it shall passe for them as if such agreement had bin proved as in case of a Taylor, it is good evidence that he put the clothes to make without more the Law says the rest. 8 Report 147.

76 *The Law judges that is illegally done, as not done at all.* One gains the estate of a copy-holder by disseisin, and leases this for years, this shall not destroy the custom. A man takes beasts for to agist his common, this gives him no seisin because not legall to use his common so. 4 Report Case of Copyhold. 22 Ass. 84.

77 *Leges priores per posteriores abrogantur, & contra.* But then the later

Statute must be contrary to the former in substance or quality, and so if the later be negative, as *assisæ non capiuntur nisi in proprio Com.* This of more power then if it had said, *assisæ capiuntur in proprio com.*

11 Report 62. 3. In the first it will warrant a plea to the jurisdiction of a Court, in the latter not so, if he be impleaded in any other place then the Countie where the Land lies;

38 H. 6. 18. 8 E. 2. Iudgement 240. But a Statute in the affirmitive doth not alter a statute formerly made, or a custome. Statute 21 *H.* 8. is, that if one who hath a benefice of the value 8 pound takes another, and is inducted, the first is void, this doth not alter the Law before that the second benefice doth make void the first,

4 Report case. *Digby* and *Holland* Case. though of lesse value then 8. lib. and so before indiction in such case. A man hath wreck by prescription, and it is inacted, *Quod Rex habebit reckum maris per totum regnum:* This shall not take away my prescription, *aliter* if the prescription had gone *per totum Angliam*, and so as large as the Statute: As the Statute 5. *Eliz.* 4.

5 Report case Sir *Hen. Constable.* 9 *Car.* case. *Bradshawe in b. Roy.* In acts that he who sets up such trade must be apprentice before, &c. alters the custom of the Realm to trade freely before without such service prescribed. The Sta-

tute

ute that Sheriffs ſhal deliver Indictments to the Juſtices of Peace by Indenture, yet if he do not ſo, they are not void. Things of neceſſity are not altered by generall words of an Act of Parliament. So if againſt common reaſon, *Plo.* 88. So if abſurde, *Dyer* 304. 27 *H.6. tit. Annuity* 41. *Inſtitutes* 2. 198. *Dyer* 234. 43 *E.3.* 22. It is ordained that Commiſſioners Eccleſiaſticall ſhall puniſh abuſes againſt the book of common Prayer, yet the Ordinaries juriſdiction is not taken away. See *Inſtitutes* 1. 96. to this bene. The words of a later Statute by Conſtruction or Interpretation onely ſhall not abrogate a former ſtatute, yet coſts were due in a *quare impedit*, by the Common Law, and damages are given by ſtatute *W.* 2. in this action. Coſts are by conſtruction taken away. So the ſtatute of *Marlb. cap.* 6. is repealed by the affirmative ſtatute of 32 *H.* 8. of *Wills*. Sed by mee if it is not becauſe theſe are contrarious in reaſon, which equall as if in expreſſe words.

4 H. 7. 11.

10 Report 61.
5 Report 71.
7 Report 14.

4 E. 4. 3.
7 Report *Kents* caſe.

6 Report *Curſons* caſe.

78 *Lex non cogit ad vana per agenda.* But rather in ſome caſes will allow the thing as done which ſhould be in vaine to do. Leſſor Covenants upon Surrender to make

make a new leaſe, he grants the reverſion away for yeers in this caſe, the leſſee need not make any ſurrender, but ſhall have his action ſo ſoon as he pleaſeth, becauſe it is vain to make a ſurrender when the Leſſor hath himſelf diſabled, &c. by his new leaſe. Covenant to ſing Maſſe in ſuch a Chappell which falls down, the Covenantor needs not goe thither and proffer to ſing Maſſe there, &c. Goods are delivered to re-deliver upon requeſt, the Bailer delivers them to a third perſon, I may take them without requeſt, Protection is caſt in a cauſe where two are ſued as husband and wife, and ſhee comes and pleads ſhe is not his wife, ſhe ſhall not be admitted, and for this cauſe though ſhee deſire it not, yet ſhe ſhall not be eſtopped to ſay ſhe was a Fem ſole. The Lord covenants upon ſurrender of the old Copy to make a new one, now becauſe the making of a new Copy is a ſurrender in law of the old, therefore an action of covenant lyes againſt the Lord if he doe it not without ſuch ſurrender which was idle to make. Exception is to this rule. In caſe the thing may be of ſome validity, and is not abſolutely vain, though *revera* it is idle. As where I.S. is bound to preſent I. D. to the Church of Sale

5 Report Caſe Sir *Ant. Maine.*

11 H. 7. 12.

7 H. 6. 31.

17 E. 3. 16.

Michael. 11. *Car. Rot.* 310. *B. Roy.*

when this ſhall next be void. In this caſe though the obligee is married, &c. by which hee was diſabled, &c. yet hee muſt be preſented if hee will ſave his bond because he may have a diſpenſation from the Ordinary. So where *Vtlary* in felony is to be reverſed, a *Scire facias* ſhall go to the Lords, &c. though he hath no land, &c. untill the Court ſhall be appriſed thereof by return of the Sheriffe, or the Kings Attorney. See 39 *E.*3.22. 23. 21 *E.*4.40.47. 20 Aſſ.1. *Perkins* 157. 7 H.7.5.

79 *Lex non hæret in ſyllabis vel literis modo de ſubſtantia conſtat.* A Writ is that ſuch a one *fuit non compos mentis*, and the traverſe to this was that *abſque hoc quod fuit extra ſanam memoriam & bene.* So *Iturus* is put for *profecturus*, its well enough. *Avowrie* is becauſe a 100 pound *pro redditu prædicto*, was behind, and ſufficient though *de reditu* had beene more apt. The King brings an action of account, and the Writ is, *quod reddat Compotum noſtrum.* Where it ſhould be *ſuum*, and yet holden good. The Meſne grants to the Tenant to acquit him againſt the Lord Paramount and his heires, hee ſhall acquit him againſt his wife, &c. A bond is to reſigne to the obligee, yet it ſhall bee 16 E.4.3. 39 H.6.43.ib. fol.39. 25 E.3. placito 21. 1 Inſtitu.241. 14 H.4.18.

bee done to the Ordinary.

8 Report case *Frances.*

So *The Law is sometimes stricter then the words of the party in force.* The Lessor grants if the Lessee is disturbed, he shall have fee, every disturbance wil not do it, but shal be of the lessor himself to raise this Contingent fee. A remaynder is limited to children unprofered, this shall be such as are not preferred when this remaynder happens to fall, and not unpreferred at the time of his death, who made such will for if they be preferred afterward before the remaynder fall it is sufficient. A statute is that Justices of Gaol-delivery, or Oyre and Terminer or any two of them shall heare and determine, &c. in this case though there be but one, hee shall execute this well enough.

Ibid. case *Alice Fulhurst.*

Institutes 3. 136.

81 *Lex non est curiosa.* Winks at small faults, one brought a Writ of Conspiracy for indicting of him the fourth of *August*, the Defendant makes a Justification for executing the office of Justice of Peace, without that he was guilty of any conspiracy before the said day or after and ruled good though he doth not precisely answer the very day laid. An action *quare fossatos fregit*, where it is more proper to say,

12 E. 4. 18.

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prosternavit, yet ruled good. A lease is made to B. and his wife, she survives and marries W. and in pleading of a new lease, It is said to begin after the end of the lease made to W. and yet held good. Assumpsit was in consideration hee should surcease *querelam pro 7 li.* and it was an action upon the case which is not for a summe certain, but dammages seven pounds, yet holden good by the better opinion. Accompt is brought of a receet *per autor Mains*, and a release pleaded of accompt by himself, and admitted good. *Champerty quod cepit maintenere & adhuc maintenet*, in a plea which is ad judged and determined, and *adjudge* good, yet it cannot be good in the present tense, *Misrecit all* is of the very ancestor, as a man says himself heir to the grandfather, whereby the office it was to the father, yet good. A condition was to lease as, A. thinks meet and in the record its pleaded *non demizavit, nec appunctuavit* and good; so not curious in the translation of the English into Latine. In case of waste *de hominibus*, it is proper to say *in exilio hominum*, but if he said *fecit vastum in hominibus*, it is good enough. *Vient lassie supra titulo*, where it appeares be-

12 Ass.28. Plo.192. case *Adams.*

Hill.11. *Car.* case *Laurence.*

10 E.3. *F.* Release 38.

27 Ass.5.

10 Eliz. Dyer 359.360.

5 Report 23.

2 H.6.11.

before there were many titles, and yet good, *Vide* 38 E.3.20.27 H.6. *Ultimo. Curiosity circa horam diei.* Upon this reason it is that *fuit* is oftentimes admitted for *est*, *pertinent* for usually occupied, ancient office *for petie continuance* &c. *Vide ante verbo Idem.* The obligee says to the Obligor, that he himself is discharged of all bonds, this is a good release being by deed, albeit it is improperly spoken.

Dyer 316.

10 Report of B. *Salisbury.* 10 H.7.27. Plo. Hill. & G. Case.

82 *De minimis non curat lex.* A quill full of gold or silver oare shall not cause a copper or tin myne to be to the King as a myne royall. *Nota*, Amercement is so small a thing a man shall not be restored to it, though there be a lawfull cause to discharge it, so where a judgment is reversed, I shall not have restitution of an amercement given against mee, cutting of trees to the value of two pence is no waste. See *Plo.*85. where it is said that a lease for an houre of a pretensed title or right is within the statute of 32 of *H.*8 of buying tirles.

9 Report 52. Plo.339. 8 E.4.25. F.n.b.60. Plo.329.

83 *Law presumes more then the partie himselfe sayes.* An Ordnary returns for cause of divorce that the parties are *infra annos nubiles, &c.* The Law sayes there are

9 Report Case *Kens.*

the more causes. A man is bound to infeoffe me of Lands worth ten pounds by year, &c. pleads that he infeoft me of the Mannor of D. and S. which are worth ten pounds by year, it is no good reply to say he infeoft me of the Mannor of D. onely, without saying what it's worth, for it may be worth ten pound *per annum* of it selfe, though hee said both were but of that value. a man covenāts with I.S. that if he do not warrant the Land to him he will save him harmeleſſe upon ſuit, he enters into the Warrantie, though this ſatisfies the words of the Covenant, yet not the Law, for hee ſhall render to him in value, otherwiſe, he doth not performe the Covenant. 14 H.7.15. 46 E.3.18.

84 *Lex intendit optima perfecta & effectualia & legalia.* A man hath eſtovers in a wood, and he comes with force and armes, and cuts down trees, it ſhall be intended for his eſtovers, and not otherwiſe, for where the thing ſtands indifferent right or wrong, the Law always judges the beſt: Where it's ſaid ſuch a thing to be done, it ſhall be intended *prima facie* lawfully done, as where one pleads that hee was poſſeſſed of a Hawk, *ut de bonis propriis*, 14 H.8.7. Dyer 308.

it, it was intended lawfully, where speech is of time indefinitely, it shall bee intended the present time. A man is bound to appear, it shall be in person. Where it's agreed a fine shall be levied, it shall be a fine upon the stat. of 4. *H.* 7. A challenge is, because such a one was fistet to the Sheriff, it shall be intended of the whole bloud. Where speech is of a judgement to bee given, it shall bee intended finall judgement. A Lease is made to an Abbot for life, it shall be intended his naturall life, and if he be deposed, his successor shall have it during his life. Hee that claimes conuses of plea in his own case, the Law supposes he will doe right and be indifferent. A Statute which speaks of attendors of treason, intends legall attendors, and not erronious: so of an office, whereof an assigne intend it a complete assigne, &c.

42 Ass. 21.
6 Report Case *Colliers.*
10 Report
3 Report Case *Fines.*
Plo. Case. *willowby.*
11 Report Case *Metcalf.*
5 H. 7. 25.
37 H. 6. 18.
35 H. 6. 54.
Institutes 3. 214. 185.
5 Report 112.
Plo. 220.
20 H. 6. 23.

85. *Lex omnia suaviter, & ad melius disponit.* A Writ is, *reperare & mundare fossatum & ripariam*, The Law will apply the most apt Substantive to his verbe, *mundare* to *fossatum*, *reparare* to the bankes, &c. The *solvendum* was to the Obligor, the Law will alter it and

46 E. 3. 38.
4 E. 4. 19.

and make it to the Obligee, and so the Plaintiffe shall declare *quod nota*. A Writ of entre is upon the Statute of *W.* 2. *quare ingressi sunt manerium de* A. *&* B. *ac unum messuagium*, ten Acres of pasture, ten of medow, in the Town of P. &c. and the case was that no such Town of P. is without addition; and so in strictnesse of Law the writ was to be abated, but now to save this the Town shall be referred to messuage and lands, and not to the Mannor which is good without any vill layed and the writ abated, as to those and stood good as to the Mannor by this fair and handsome disposition of things. Trespasse *quare clausum* of husband and wife, *& bona sua cepit*, and declare of a taking before marriage, and the Court said that this word *sua* being indifferent shall refer unto the wife onely, and so good by this ordering that word, Trespasse *contra pacem*, *R.* 2. *& Regis nunc* where part of it was in the one Kings reign, and part in the other, and so declared, though the Writ is joynt *contra pacem*, the trespasse shall be so marshalled to make it good. *Cessavit* is of divers services, it shall be referred to such services onely in which the Law says

4 E.4.19.

19 E.4.6.

7 H.7.2.3.

11 H.4.15.

37 H.6.2.17.

H.7.7. a cessor may be and not to others, as homage, &c. *In a Quo warranto prescripton*, is alleaged for waiue and possession of the Abbot, and the Act of 32 H.8. of *Reviver pro catellis felonum, & eo warranto clamat omnia ut spectant* to the Mannor and good, though *catalla felonum* cannot in Law be spectant to a Mannor, the Law will refer this word to other things before mentioned, which may be appertenent to a Mannour, or else make that word as void, rather then overthrow all. A man grants a rent *de molendino suo percipiendum de se & haeredibus*. The Law will marshall it thus that he grants the rent for him and his heires, *percipiendum*, out of the Mill, &c.

Report Case *Abbot Strata Mercella.*

2 Ass.66.

86 *Lex semper dabit remedium.* A man leases land excepting the trees, hee shall by law have free egresse and regresse for to come and cut them down and carry them away. Where the statute gives a third part to him who discovers an offence against any statute, he shall have an action for this, albeit it is not expresly given,

4 H.8.1.
11 Report *Lifords* Case.
1 Report 98.

37 H.6.4.

87 *Lex judicat de insufficienter vel vane factis quasi omnino infectis.* A Baily of a Franchise makes an insufficient return, it

is

is as if *nullum dedit responsum*, and a *non omittas* shall be awarded, and hee shall lose the franchise, *hac vice*, no office and an insufficient office all one. Sommons by one Sommonour, is as if none at all had bin: if a rent is granted but no atornment it is as no grant. Presentment to a Church ful before, though the presentee hath accepted of it, will not determine his annuity granted him till he should be presented. A man is acquitted upon an insufficient Indictment or appeal, no damages shall be given, but is as if no acquitall had been. The power of an arbitratour is repealed, but it is imperfect because notice was not, &c. he may well plead, *non revocavit*. An appeal is brought upon an Indictment, but because the Indictment was insufficient it shal be taken as no Indictment had bin, & abettors shall be enquired off. *The same law is where a thing is done in part onely, as where debt is payed in part. Vide 5 Report, Case Lord Mountjoy. Institutes 1. 25 4 Report, Case Vernon.* The same law is where a thing is *vane factum*, and so acceptance of a vane thing is as none, a Commission of the Peace is direct to two, which are dead, this will not repeale a former

Institutes 24 453.
5 H.7.28.
3 H.7.11.
Plo.19.
Stamford 52.
50 E.3.17.
14 H.8.21.
26 E.3.69.
Fitz Coron. 444.
27 Ass.25.
8 Report Case *Vinior.*
20 E.4.6.
10 H.7.24.
26 E.3.4.
P. Brook 50.

Commission. One makes an Indenture or other Writing under seale of receit of goods, this works nothing more then if no deed at all had been, but a deed of receit of money shall conclude for to say *uxques sur Receiver*. A *Metropolit* and doth commit administration where there were not any *bona notabilia, &c.* it is as none. An Infant grants a rent, or no attournment is to such grant by the tenant in case of a man of full age these may plead ne *grant a pas* for the insufficiency of them.

27 H.8.21.
49 E.3.3.
10 E.3.32.
14 H.8.21.
24 H.8.2.

88. *The law will accept of that is good in grants or pleadings, and reject the surplus.* I inscoffe *A.* and grant to *B.* by the same deed that I shall warrant for me and my heires to *A.* that is a good warranty to *A.* and the words to *B.* are void, A man grants 20 load of buche to *Io. Rosset* and his heires, *quorum* 16 *prædictus Johannes habuit ex dono Richardi patris mei, &c.* albeit *Io.* never had any such grant before of the Father, &c. the grant is good for the whole loads. A Bishop certifies bastardy, and endorses the reason because the Father was absent seven yeeres. The Law will reject this later part, and restrein the former of Bastardy A Writ

10 E.4.56.
30 Ass.14.
4 Institute 48.
11 Ass.24.

goes

goes to chuse a Burgesse of Parliament, no Lawyer, the Law rejects this last.

89 *The Law is more agile in working when the act of the party.* This the reason that where lands are devised to him, that is heir at law, he shall be in by discent, and not by the will. Tenant by the curtesie is the reversion to the wife of I.S. he infeoffs the husband and wife, it shall be a surrender to her, and the *husband takes nothing.* See 20 *Ass.* 16. 35 *Ass.* 11. 11 Ass. 14.

90 *The Law where it enjoyns an Act to be done will provide he shall not be hurt, a latere that doth it.* And for this, where I have annuity and many arrears are, and then it's due at *Mich. subsequent*, and I do receive it then and give an acquittance, now because he is not bound to pay it me without acquittance, therefore because I could not receive it without this acquittance, it shall not bar me of the arrears due before, *aliter*, in case of rent. 3 Report 65.

91 *The Law regards the principall thing, and not additionals.* As in case of a Mill, which is in demand, it's no matter whether Corn-mill, Paper-mill, or Rolling-mill. A grants me the yearly annuity of a robe with furs, when I come to sue 4 Report Case *Luttrell.*

7 E.3.73. for this, I shall onely mention a grant of such a robe yearly, without mentioning furs.

92 *The Law adjudges the denyall to doe a thing as the not doing it, or breach of Covenant, &c.* A. delivers B. ten pounds for certain woad, if hee like it when hee sees it, and if hee like it not, then to re-deliver the money, if when he sees them he deny to have them, the bargain is determined, and no agreement after will make it good. A man is bound to doe an act when I request him, and he sayes hee will not doe it, hee hath forfeited his bond.

8 E.4.15.

5 E.4.31.
4 H.8.23.

93 *The Law is not satisfied with shadows but substances.* It is not sufficient for a labourer to be retained in service, if he doe not actually serve. If one accept of a thing in satisfaction of another which is of no value it is not good. See *Wades Case, 5 Report, to this purpose: 26 E. 3, 26 & 33. 46 E. 3. 28 Case of Warranty.*

1 H 6.1.
9 Eliz. Dyer 256.

94 *The Law hath an eye to the beginning of Acts.* A Lunatike smites himselfe with a *knife*, and after becomes of sane memory, and dies, hee shall not forfeit his goods. I have an intent to strike I. S.

Plo. 260.

3 H.7.14.

and

and it happeneth upon I. N. it is a maihem, &c. If presentment be in time of war, all done upon that is void. A servant kills his Master after he is departed upon malice conceived before in time of his service, this is petit treason. A man inhabites parcell of a gorse, by which all is broken in time shortly after hee shall be charged of repairs of all and shall answer damages of all.

6 E.3.41.
2 Report Case Bingham.
Fitz Coron. 210.
16 Ass.3.

95 *Loquendum ut vulgus.* As sels to me ten Acres of corne, it is good onely for the corne, and upon this reason shall the construction of a deed be made to controul the sense of the Law.

17 E.4.1. Plo.29.

96 *A lawfull act by matter, ex post facto, may become unlawfull.* So where a distresse is taken well, and killed afterwards, so if it be sold, or hee claime profit in it. A man hath a house boot, and takes this every yeere, as he may doe though he use it not of 20 years after, for it is not good to build with before it be seasoned, if now he sell it or convert it to other uses, he is a trespasser. The same law is where an act is well done by authority of the partie, as I deliver a cheft to one who breaks it, trespasse lies, he which is di-

16 H.7.14.
2 E.4.5.
22 E.4 47.
13 E.4.9.9.
9 H.6.29.
11 Report 11.
10 E.4.3.
M.2 H.8. *Kell.*

strained payeth his rent, and afterwards is denyed to have his goods delivered, hee shall have an action of trespasse or detinue. So in many cases by not doing some act *subsequent*, a former lawfull act shall become unlawfull, as where the Sheriffe makes an arrest, and returns not the *Capias*, or if it be done by his Bailiff or servant, and no return, it will make the Sheriffe himselfe a trespasser though not the servant who is to be quit in such a case, &c. An Executour commands the taking of goods of the testator, and after refuseth to prove the Will, he is a trespasser, but not the servant, the Sheriff seises the goods of one out-lawed and after doth not charge himselfe in his account with them when the partie is pardoned or outlary reversed, hee shall have an action of trespasse against the Sheriffe. The Ordinary refuseth a Clarke for lawfull cause, as insufficiencie, if he examine him afterwards, and accept him, he makes himself punishable for the disturbance before. A Writ well purchased by matter subsequent as death of one of the demandants may become inapt or false, and so abate. A man is arrested by command of the Justices

in

2 H.7. *Kell.*

1 E.4.17.
16 H.7.14.
11 H.4.58.

1 E.4.9.
11 H.7.23.

1 E.4.4.
8 H.6.8.

11 H.7.23.

9 Report 131

in *Westminster* Hall, this is justifiable, the *same Term*, without record thereof, but in another terme not; unlesse a Record bee of it, and by negligence herein he may be punished by false imprisonment. 10 H.7.18.

97 *Malitia mutat legem.* A is bound to inclose against a close of mine called White Acre, if my beasts go into his for lack of his fence, it is excusable, but if my Close be sown with Corn, &c. by which hee was secure and made not his fence, if I should now put beasts into my Close so sowne of purpose they may escape, &c. there he is not to be excused. So an Infant in case of Murder shall be tryed for his life where malice and subtlety appears, *alter non.* 39 E.3.3. 3 H.7.

98 *Melior dabit nomen rei.* Husband and wife joynt executors, the Writ shall be *executoribus* and not *executrici*, some convenient proportion of gold or silver oare shall *give the name* to a myne to be a myne Royall, though a great bulk of Tin is. Lether of a sho shal give the owner ship of the threed of I. S. used in the making to the owner of the leather, and so he shall have all the property. 22 H.6.30. Plo.323. 5 H.5.16.

99 *Magis dignum trahit ad se minus.*

Char-

14 H.4.36. Charters are put in a box, this alters the
10 E.4.14. nature of the box from a chattel, and not
40 H.6.18. it shall goe to the heir, and it is no felony
to steale this box, nor lies a *Capias* of it in
42 E.3.13. detinue. See 30. *H.6. Fitz. tit. bar. simil.*
29 E.3.19. Where the realtie shall prevail, issue is, if
43 E.3.13. such an one was instituted and inducted
22 H.6.27. the tryall in this case shall be by jury by
reason of the Induction. A man retains a
38 H.6.14. servant to serve in all occupations, now
18 H.6.35. because wager of law doth not lye in case
20 H.6.32. of service in husbandry if debt is brought
for wages, hee shall wage law in none of
them. An action against two, and the one
ought to have priviledge of Chancery, he
shall be outed of this and all shall be at
the Common Law. A Lease is of a cham-
21 E.4.34. ber & a bed rendring rent, in debt for this
46 E.3.8. rent, the defendant shall not wage his law
for the bed, because the other is *Magis*
dignum, and shall rule the other. An ex-
change is of Greene Mede for blacke
acre, and twenty shillings rent in this case
all shall be by deed, not that the land is
lesse worthy, but because if it be not by
deed it will be void for the rent, and so o-
verthrow the exchange for all, See 11
Perkins 50. *Report Case Auditor Curle* 46 *E.*3.8.

100 *Magis continet in se minus.* Plu-
ll numbercomprises the singular, &c.
a man is bound to pay twenty pound
d tender is of that and more it is good.
Commons grant tonage and poundage for
ur yeers the Lords agree for two yeeres,
ey need not send backe this bill to the
ouse of Commons for their assent. Cu-
ome was to grant Copyhold estate *in*
ordo, this implyes that hee may grant for
fe, &c. *Quare impedit*, in the Register is,
resentare ad Ecclesiam, by this hee may
ave *pro tertia parte*, &c. *Procedendo*, sup-
pose an Assise before *Stoufe* & *Burton*, Ju-
stices, &c. and it was also before *Shard*,
& good because three implyes two. An a-
ction of battery is brought & the evidence
for this proves it a *Maihem & bene* because
it is battry & more. A man is restored to all
lands forfeited by his father in fee or tayle,
that he hath but for life, shall be restored.
Exception. Traverse is of a feofmēt by two
pleaded, and its found that the Feoffment
was by three, It is against him who pleads
this. *Vide 9 Report* 52.3. Power is given
to make leases for yeeres, &c. Yet he may
make one lease onely.

33 H.6.17.

4 Report Case Coppyhold.

10 Report 136.

31 Ass.1.

39 E.3.20.
Plo.86.7.
7 H.7.13.

14 E.4.1.
6 Report Case *Fitzwilliams.*

101 *Modus & Conventio vincant*
legem

legem & Regem & contra. This rule is a-
greed *in Magna Charta. Conventio le-*
W.2.50. *gi deroget*, Barreth the Law as the trans-
lator hath it. The Law says *Dyer* will not
determine contrary to the agreement of
Dyer 181. 312. the parties, and for this cause where a gift
in tayle is, the law says its to the use of the
Donee, yet by the deed it may be to the use
of the Donor. A rent is granted to one
7 Report *Maunds* Case. and his assignees *pro consilio*, this may now
be assigned which without this agreement
in the deed could not. And note by this a-
greement a man may tye himself to things
out of his power to do, and which, *quo-*
40 E.3.6.& 2. Dyer 33. *dammodo*, are impossible & which the law
frees a man of by common right. As
where a man tyes himself to repaire, banks
which are subverted by a floud, yet hee is
bound to repair them. So to repair a house
blowne downe by tempest, which was a
good plea in an action of waste. So where
the Lessee tyes himselfe to leave a house in
so good plight as hee found it, if it was
feeble at the time of leasing and falls
down, he shall make a new one, which by
8 E.4.9. law he was excused of. Sheep are letten, &
the lessee covenants to render the polls at
the end of the terme, he shall do so though

they

they dye of the Murrain, &c. The banks may be repaired, the house built, new sheepe bought, for to render the poles is the number not the very same. A man undertakes by covenant to get the good will of such a woman, or that a beggar shall pay 1000 pounds that such a field of corne shall grow, &c. that such a woman shall have a childe, that I. S. shall make a scoffment of his Land, the Law says these are possible, but if the Law say it is impossible, I am not bound by my Covenant, as where it is to leave a Wood in as good plight at the end of the Term & its blown down, so to goe to *Rome* on a day: So of the case where it's covenanted, such a medow shall not be surrounded, or that such a house shall not bee burnt, and it is by lightning, &c. it seems in neither he shall be bound because impossible: So also where the matter agreed is against the Law. A man agrees with I. S. that if hee pay him not 20 pounds, he shall imprison him, &c. though he payes not the money at the time agreed, hee cannot imprison him. So a man agrees to a By-law made to imprison for the penalties, &c. this shall not binde him, Justices of assise held plea of Land in ano-

40 E. 3. 2.

Perkins A. 146.

Vide Dyer 33.

Poulton de Pace Regni, &c. 11.

See *Heyburns* Case. 14 E. 2. cited in the Case of Ship-money.

5 Report 64.

another Countie, then their warrant was, and the parties did agree to it, this shall not binde them, but if either is put out by execution, *inde, &c.* hee shall have an Assise. If parties agree the distresse shall be irreplegiable, this is void, as against Law. The Defendant would render the dower at the day in the writ, but did forbeare by consent of the Plaintiffe, yet hee shall bee amerced. The King reserves a rent, and a condition to reenter, if it is demanded and not paid, but because the law is, the King need not make any demand, he shall enter without demand, this speciall agreement notwithstanding. So in case of incidents which are inseparable by Law, no agreement of parties will separate them, as where an Annuity is granted for the exercise of an Office, and there is a proviso, if the Office bee taken away, yet the annuity shall continue, if the office is taken away, it shall cease. See 44 *E.* 3. 19. & 36. *bene*, to this purpose. *Lig at Regem in casu.* The King makes liverie to his Ward, without excepting that the dower shall be assigned to the wife by him: the King is bound by this and she shall sue the heire in a Writ of dower. The Kings Tenant alieneth part

8 Ass: 16.

Institute 1. 146.

18 E. 3. 39.

7 E 6. Dyer 87

5 E. 4. 8. Case Garter.

F. n. b. 264. D.

of

the Land holden, the King may distrein his alienee for the whole rent, and is not bound by the Statute *Quia emptores terrarum*, but if the alienee make a fine with the King for this alienation, then hee shall onely pay his part of the rent. F.n.b. 238.

Nor *Nihil dat, quod non habet.* A Tenant for years cannot give seisin of rent rising out of free hold to maintaine an assise, because himselfe hath not free-hold. Conusee by fine of a Reversion bargain, his to I. S. hee cannot distraine, because his barganer could not. Reversion is granted by fine, the grantee disseise the tenant and infeoff, the lessee enters, this is no attornment here, because hee shall not be in better plight then his feoffor: An administrator cannot have greater property in goods of the Intestate, then the *Ordinarie* himselfe had before, yet by words in the Statute he hath. Issue in tayl being bound by the Statute to pay debts of the Kings when the estate by alienation shall be disposed nn to another, hee shall bee in better case, and is not bound to pay these debts, for the Statute extends not to him, so is at the cómon law, in which case by death of tenant in tayl the issue & all under him

6 Report Case *Brediman.*

5 Report Case *Knotsford* in Case *Malory.* Plo. 281.

7 Report Case

Lim were discharged, so where a custom inlarges the power of a Grantee. A Lessee of a Mannor is, excepting the trees, 8 Report Case *Swain.* which Mannor are Copyholds now he himself cannot cut trees they are excepted but if he grants a Copyhold, the grantee may cut trees by the custome which cut-strips that Lease. Upon the same reason 5 Report Case *Knight.* it is that *Prerogative* of the person of a Grantee will adde power, &c. which the Grantor himselfe had not, as where 5 Report Case *Mallory.* a reversion in part is granted to the King he may *enter for condition* broken in this part, which the Grantor could not do. The like law is when a man comes in by act in law, as by Escheat, &c. he 19 E. 4. 6. may distreine though he who dyed without heire could not do so. A subject of the King of *England*, enters bond to a subject of the King of *Spain*, enemy to the 22 E. 4. 23. King, it is void to the party, yet the King shall have it and recover the debt which the obligee himself could not do. The King grants Conusants of plea in the Mannor of D. then a new action is given by Statute 2 H. 4. Fitz h. Prohibition, 10. which was not before, the Grantee shall hold plea of this though it was not in the Grantor. *Vide* 4 *Report* 23.

103. *Nemo bis punietur pro uno delicto.* An Ecclesiasticall person recovers damages in trespasse, hee shall not be punished again in the Ecclesiasticall Court, but this seems *quoad partem ipsam*, but by suit *ex officio* he may, so the partie against whom damages are recovered in trespass may bee fined at the Kings suit upon Indictment, &c. and so in many cases, where the wrong trenches upon severall persons, as a servant beaten, so in case Baylor and Baylee they shall have severall actions. So Dissessor and Dissessee tenant for life, and he in the remaynder shall punish the forger of false deeds. See 40 *E*.3.11. 43 *Ass*.9.

7 H.41. Fitzh.proh. ibid.10.

20 H.7.5.9. 15 E.4.25.

104 *Negativum nihil implicat, in a precipe quod reddat.* The tenant wages his law of non-sommons, this doth not imply that he was tenant, nor shall conclude him, others *contra*, one pleads, *ne chasa pas*, in Frank chase of the Plaintiffe, this is no granting that hee hath a free chase, but hee must prove it. One prayes to be received the demandant sayes that hee hath nothing in reversion day of Writt purchased, this doth not inferre that hee had after the writ purchased, but if he hath

22 H.6.41. 33 H.6.24.

10 E.3.20.

48 E. 3. 13. 14. hee ought to have mentioned it upon his Prayer.

104 *Nemo tenetur seipsum prodere.* And for this in Cases criminall he may refuse to answer to matters which tend to prove evidence in this, and if hee deny the matter, it seems no perjurie to be punished though hee answer otherwise then the truth is, and so Sir *John Walter* held in case of an answer of a defendant in Star-Chamber, hee should not be charged in this for perjury. Exception. There was a 40 Ass. 35. man examined upon oath of goods of the Kings which were devised to him, and come to the possession of the defendant: and a juror may be examined upon oath if 13 H. 7. 29. he have sufficient free hold, this is no crime, &c.

105 *Negatio duplex est affirmatio. A distresse was pro servitio infacto.* The 9 H. 7. 13. defendant sayes, *Quod non fuit infactum*, Vide Litt. 220. and ruled as good a plea, as if hee said it was done, though *Conisby* said it was but an argument in case of a grant, but it seems such Logicall curiosity shall not hold to avoid a grant. It is said such a thing *Non oportet fieri, nec non* such a thing, though Institutes 1. 145. such

such expressions are *duplex negatio*, yet its holden a good negation in Law, and no affirmation. 1 H.7.11.

106 *Ovune est a defeter chose ceo ne serra object alue.* One brings a Writt of conspiracie to defeate a villenage *convinus perfrand* it is no plea that hee is his villaine, so in *libertate probanda.* In error outlarie *pro fine Regis* is pleaded against him, and holden no plea, for hee is to defeate all by this Writ, in error for to adnul an outlary, if he is twenty times outlawed, it shall not stop him, but hee may go on with his Writt of error. The husband makes a Lease for life, of the land of the wife, rendering rent, and dyeth, the heire of the wife brings a *sur cui in vita*, the Tenant shall not alledge the reversion, and affets in the heire for that that he is to defeite this warrantie, but note where the collaterall thing to be defeated is a legall bar of the principall right, there it will stay him, as where a writ of errour is brought to reverse a recoverie, and a collaterall warrantie is pleaded, this warrantie will bar him of his Writ of errour. 42 E.3.14. 8 E.4.6. 7 H.6.44. 6 E.4.9.10. 7 H.4.49. 38 E.3. 3 Rep.lin.col. Case 61.14. 6 H.6.3.

107 *Ou chose fait per implication serra*

Institutes 1. 180. *bona, & contra.* A Letter of Attourney is to two to make liverie and seizin, and the one of them makes liverie the other being present, and nothing saying that is not good, but authority to three bayliffes, and to every of them, and two executes it, this is good because it is for the promotion of justice. A record is *Jurati. exacti*
1 R. 3. 4. *comperuerunt, quorum duodecim super sacrum suum dicunt, &c.* and doth not say, *electi, triati & jurati*, this is errour though these words are implied in these words,
4 H. 7. 2. *super sacrum*: Aid is prayed of the patron and ordinary, which are returned, war-
7 H. 7. 11. ned and doe not come, it is as much in Law as if he had come pleaded, and assented. A termer doth not come to save his default, it is as much in Law as if he had come into Court and said, that hee would not save his default. In an Assise the She-
48 Ass. 40. riffe returns the Baliffe was attached, and exception taken because the Sheriffe did not say, the partie could not be found and ruled that it is included, and is well enough.

108 *Ou chose serra, rule per le greinder part de le state. Disseisee Releise* to the dis-
Lit. seasor, after he had made an estate for life,

his

his right to this free hold is gone also. A. 25 Ass. 7.
Cognisee dischargeth the reversioner, or
purchase, the reversion, the particular estate
is freed also: Lessee of a Mannour, to which 14 E.4.6.
a villain regardant (is) the Lord in rever-
sion manumits the villain, it seems this
shall binde the Tenants for years, Tenant
in dower releases her right to him in re-
version upon a lease for life, her right is 8 Report Case
gone even during the *life of the Tenant* *Althams* 151.
for life. A menaltie is granted for life, the 9 Report Case
remainder in fee to the Tenant, it is extin- *Ascough.*
guished in all: 9. *Report Case, Ascough &*
Quiks Case ibid. Land is given in taile,
the remainder to the King, the tenant in
taile shall hold of none. *Fallit hæc regula*
aliquando. A. is impleaded who hath
nothing in the free hold, fee discends, this
shall not make the writ good, but if the 1 H.6.2.
reversion of the fee discends to the free-
hold which he hath purchased, *this makes*
the Writ good. A Parson makes a lease, the
Patron who hath the feesimple confirmed,
this shall not make this good against him, Dyer 133.
hath a grant of the Parsonage for yeers, 7 Report *Com.*
&c. See 2 *Report Beckwiths Case, Instit.* *Bedfords case.*
1. 298.

109 *Ouvneserra sou judg, demesne, pay-*

 master,

12 H. 8. f. *master, carter, &c.* Lessor covenants to repaire the house, if he doe not the lessee may pay himselfe of the rent. Gardian of a Church, at his own cost repairs the Church, and for amends deteined ten loades of stopes of the parishioners for which the successors Gardians bring an action of accompt, and adjudge that hee may lawfully deteine them, *aliter* of a servant Baly, &c. who doe disburse money, &c. See the cases of Tailors, Hostlers, &c. who may deteine Robe, Horse, &c. till reasonable satisfaction.

37 Eliz. Case. *Methold* and *Wing.*

3 Report case.

110 *Ou Chose in lieu serra de mesme le nature.* Land escheat to the Lord who is in of the Signiory by discent, so shall hee be of the land, and shall have his age, and if the Signiory was in tayle, so shall the land it self be, and the Donor of the Signiory shall have a *formedon in revertor* if hee dyes without issue. A fine is acknowledged of a Signiory and tenancy escheate, a *Scire facias* shall be of this land, and he shall not say nient comprise, for it shall be said parcell of the Mannor which comes *in loco.*

4 H. 4. placito 9. 1mo & Kell 204.

46 E. 3. 4.

48 E. 3. 11.

111 *Parum differunt que re concordant.* A declaration was to have a Faire

three

three days, and ruled that two dayes and two half dayes will maynt ain this declaration. An assise was brought against *Mayor* and *Comminalty*, and found that the *Mayor* and *Bailiffs* did the disseisin, but because no more was of the Comminalty then the Bailiffs it was held good. But note where there is an apt form in the Register, there a man shall not differ from it. A *Precipe quod reddat* is forty and ten acres of land, &c. and the Writ abated, *quia non fuit quinquaginta*. The moity of twenty shillings and ten shillings is not all one. See *Institute* 3. 131. simile in point of pleading. See 17 E. 4. 3. *Testamentum & literae testamentariae* all one. 16 E. 2. Action of Case 471. 31 Ass. 19. 14 E. 2. F. Bre. 816. Institut. 1. 197.

112. *Parols ou voilent amount al act & contra.* A condition of a bond was to permit I. S. to remove his goods, and denyal by word to remove them is no breach of this condition, without averring of bolting or locking the doore against him, &c. But note where its said generally that such a one *impedivit*, interrupt or disturbe, &c. it is good without more as it seems and shall be intended actuall disturbance, yet see 47 E. 3. 24. *Contra* that 8 Report case Frances.

5 Report 76. 22 H.6.17. 35 E.3.3. he ought to shew some cause or act done in his pleading. A Commoner said to the Lord of the soyle that the soyle was his and commanded him to cut no trees, this will not amount to a disseisin.

26 Ass.17. Dyer 240. 113 *Parols subsequent bounded or qualified by the precedent, & è converso.* A termor covenants that for any act by him done, the assignee shall enjoy against every man, this is no *absolute Covenant* that he shall enjoy. A bond to make sufficient estate as *A* shall devise, these last words take off the vigour of the former for the condition is well performed though the estate he makes be insufficient, if *A* devise this. A Covenant is to surrender upon request, and to permit *A* to take the profits, the *word request* doth not goe to the latter clause, and he may take them without request. Actuall seisin and possession spoken of the word actuall goes to the first onely. *Scilicet Seisin, vide* 49 *E.*3.16. 4 *Report, Case Palmer.*

5 Report 23. Pasc.4. *Car.* Lady *Smiths* Case. 4 Report Case Bevill.

39 H.6.9. 114 *Parolx sont plea.* The condition of a bond is if the Obligor *do not pay*, that then the bond shall be void, so it is that the Obligee shall pay, &c. both are good

good and shall stand, and it is his folly, &c. And not like the case where the *solvendum* was *to the Obligor*, for this may be omitted and is void, *Ergo* it shall not hurt. A Bond was made T. T. Sheriffe of W. in *Com. perdict. pro prædict.* & ruled nought for the senflesnesse of the word, *perdict.* but for *parolls font* plea, *Vide placit hic* 151.

4 E.4.29.

Trin.21. Iac. Case *Nowel.* in B.Roy.

115 *Pœna aptabitur damno.* If a stranger commit waste in my land by which I lose treble damages, in trespasse against him damages shall be recovered treble. Offence against a statute shall be punished as that says, and so at the common Law as that directs.

44 E.3.27.

9 Report Case *Hussie.*

116 *Pœna sine culpa.* Assise is against husband and wife, and shee sole did the wrong, and there is no *other forme*, Yet the plaintiffe shall be amerced as to the husband for naming him that did nothing and yet he cannot help it.

7 H.7.2.

117 *Pœna delictum superabit.* A man lets houses in decay at the time of letting and they are burnt by his negligence, hee is bound to make them new. *A.* had recovered forty shillings if the Sheriffe had made his returne by a legall officer, in an action upon the case for this, he shall reco-

40 E.3.6.

38 Ass.13.

ver

ver against the Sheriff twenty Marks.

118 *Particeps criminis & non pœna.* Tenant by entire service ceaseth, the Lord recovers in this part the ceassor was by this he shall lose his entire Signiory, and the tenant shall have benefit by it. Husband seised of land in right of his wife sowes the land, and after he himselfe sues a divorce, *Causa præcontractus*, yet he shall have the Crop.

6 Report Case *Bruerton.*

5 Report *Olands* case.

119 *Pœna tollitur cum culpa, vel remanet culpa.* The King pardons all alienations, the fine due by this is also pardoned, if a contempt is pardoned, the amercement also is.

14 H. 6. 26.

5 Report 49.

120 *Propositio hypothetica taken Categoricè.* I say to I. S. if hee will beat mee I will beat him, and this without any provoking words, this is a menace and an assault, and the if is idle. Administration is committed to two, and the one being present says, that he will take the administration upon him (if the other will agree) hee is administrator pretently till the other disagree. One says to I. S. if thou go to *London*, thou art an arrant Traytor, it seems these words are actionable, and shall be taken absolute. The defendant in action

37 H. 6. 20. aut eo circiter.

37 H. 6. 28.

of

of batterie and menace, &c. justifies thus, he saith that if the tenants of such lands will kill or maime him, hee will himselfe defend; and will rather beat or maime them then they shall him, and this holden a good justification. I will prove him perjured if hee will justifie his answer in Chancery an action lies. 10 E.4.6. 3 Car. in b. Roy *Carbols* case.

121 *Principio non valens tractu temporis non convalescit.* A high way is granted to mee, to B. acre where I have no free hold in it, albeit after this grant I purchase B. acre, this shall not make the grant good. A suit is begun in *London* for the same matter, for which a suit is depending in the common place, this is ill begun in *London*, now a nonsuit after in that in the common place shall not amend that in *London*, or make it of any validity. A Bishop makes a Lease for foure lives, and one of the men for whose life, dies in the life of the Bishop, this shall not make it a lease for three lives within the Statutes, 32 *H.8.* and 1 *Eliz. vide ad idem* 11 *Report Case*, Auditor *Curle*, & 4 *Report Dyuries Case*. A man leases land for life, and then grants the trees which grow there, this shall not be a good grant after the Lessee dies. I sell 21 Ass. 2. 14 H.7.7. 35 H.6.12. 10 Report 62. 21 H.6.46. 4 Report Case *Herla*:

a horse to I. S. upon condition to pay 40 shillings at Michaelmas next; and before this day I sell him to another, the first vendee failes of payment, by which I receive the horse, this will not make the second sale to be of force. Debt in the Stanneries is brought against an heire, which is not maintainable there by Law, now though he pleade a false plea, by which his goods are chargable there, this will not affirme their jurisdiction. *Exception* this rule fails in things which have *operation by estoppel*, as if I let B. acre by deed indented, in which I have nothing if I purchase this afterward it is a good Lease. So in case of Justice, one makes a return wch is no Sheriffe but afterward the Sheriffe avowes it was done by his Officer, this is good now. Recaption lies not upon a repriſall of a distresse in case a Replevin was sued in a Mannor or Liberty, and not in the County, yet if it be removed this writ now is maintainable. The same Law is where the impediment is removed, tenant in taile is the remainder in taile of the grant of the King. Tenant in taile acknowledges a fine, or suffers a recovery it shall not binde but if after the reversion is put out of the Crown

Plo. 432.

9 Car. in b. Roy *Smith* Case.

4 Report Case *Rawlins.*

9 H. 4. 1. Vide 8 E. 3. 24

F. N. B. 73.

8 Report Case Lord *Stafford.*

Crown it will binde. Tenent for life infeffs him in remainder, in taile and his wife, this is no forfeiture or diſcontinuance, becauſe if ſhee die firſt it will bee a ſurrender, but if ſhee ſurvive a forfeiture. This rule failes alſo by long continuance of time, as where a man preſcribes to have a rent by diſtreſſe, &c. It is no plea to ſay it was always payed by coherſion of diſtreſſe, albeit it was begun by wrong. &c. 41 Aſſ. 2.

122 *Principia valens tractu temporis non devaleſcit.* A man ſays to me ſee you I. S. I will kill him I may him hold, and I ſhall be excuſed of this impriſonment, though hee repent him, one makes a leaſe which is good, now by alteration, &c. it ſhall never come to be forgery. 9 E. 4. 26.

123 *Principio dato ſequitur concomitans, & ſit ſublato.* I have a Mannor in which is a Park and Fiſh-pond, I leaſe this excepting the game, &c. And after I grant the Reverſion, the Deere and Fiſh ſhall paſſe as attendants. If a ſtatute now made gives an action in caſe none lay before, the ſame Proceſſe Judgement, and Execution ſhall be, as in the ſame action was in other Caſes, where it lay before at 11 Report *Liſords* Caſe. 10 H. 7. 10.

the

the Common Law, albeit this ſtatute doe not ſay any ſuch thing. He which takes upon him to graunt a Rent, it ſhal be by deed, and hee ſhall tender a Deed for that purpoſe without any agreement for it. A bond is to a Sheriffe to diſcharge him of the returne of an Exigent, he ſhall diſcharge him of all. Concomitants and therefore though he return him *languidus in priſona*, which diſchatges him. If after diſtreſſe *ad habendum corpus*, goe forth to the new Sheriffe, and the old Sheriffe is diſtreined to the value of twenty pence, which is forfeit, now the Obligor hath failed of his promiſe. Cauſe of appeal is pardoned, and after an Exigent goes out, now the goods ſhall be ſaved which otherwiſe by award of the Exigent were forfeited, becauſe the principall was pardoned.

5 Report 11.

18 E. 4. 11.

35 Aſſ. 9.

124 *Preſumptioni ſt abitur donec probetur in contrarium.* Unity at the time of the diſſolution diſcharges tythes upon the ſtatute, but this is upō preſumptiō of preſcription, &c. Now if it appeare upon evidence, that part of the Mānor was in leas & paid tythes, this diſproves the preſumption, yet the reſidue of the Mānor ſhal be diſcharged of tithes. A man purchaſeth land of I. S. who

Michel. 40. & 41 Eliz.

who is impleaded in a *precipe quod reddat*, the law presumes him to be a Champertor without shewing hee was so till he may prove it otherwise. 50 Ass. 3.

125 *Qui tacet consentire videtur.* He which is present at the actuall killing of a man, and puts not debate shall be adjudged assenting. A Writ is against foure, two wage their Laws of non summons, the other two say nothing, it is so strong an implication of joyntenancie that they cannot deny it afterward. The Ordinary makes an appropriation to the Patron, it shall be said made by his assent, *vide Dyer 62.* 27 Ass. 3. Vide placito 4. 8 H. 6. 36. Plo. case. *Grendon.*

126 *Qui sentit commodum sentire debet & onus.* He which hath any benefit of a river shall be charged with the scowring of it, upon this reason it is that the assignee is chargeable in covenant to repair, though he is not named. A man grants a rent which is behinde, after he grants the land to another, the grantee dies, he which took the profits when the rent became arreare shall pay it, See 20 *E.* 4. 10. 12, 13. 26 *E.* 3. 64, 30. I retaine Counsell for one, he shall pay the fee and not I. 37 Ass. 10. F. Bar. 305. 5 Report Case *Dean.* of *W.* 11 H. 4. *alibi.* 4 Report *Gerneis* case. 30 H. 6. 9.

127 *Qui sentit onus sentire debet & commodum.* This the reason if a tenement is upon

2 Report case Shelley 99. 9 H.7.25. upon condition, if the sessor or his heirs pay ten pounds before Michaelmas, that they shal re-enter, the father hath issue a daughter and dies, his wife being with childe of a sonne, the daughter paies the money, she shall hold the land. The husband and wife suffer a recoverie of land of the husband, and they vouch and have judgement to recover in value, the husband dies, the wife shall have nothing of the intended recompence in this case, for shee lost nothing.

Plo. case, Eare and Snowe.

128 *Qui per alium facit per se ipsum facere videtur.* An annuity is granted till he is promoted to a benefice by the grantor and his heirs in a Writ of annuity, he shews the plaintiffe was promoted by his mother at his request and *bene*. In trespasse against A. and the evidence is that B struck me by his incitation and *bene*. A Bayly arests mee, he may shew the Sheriffe did the arrest. A Rescouse is made to the servant of an officer, he may return the rescouse made to himselfe. An Abbot prescribes to hold land discharged of payment of tithes *dum propriis manibus excolitur* if it be tilled by his servants, it is within the prescription, outre with my beasts

33 E.1. anty 51

39 H.6.8.

1 Report Case Frost.

39 H.6.42. Dyer 241.

20 Eliz. Dyer. 277.

beasts is my entre, and so he shall declare, *Quare clausum fregit, vide* 15 *E.*4. 24. 21 *E.*4. 16. 44 *E.*3. 44. 12 *H.*7. *Kellow, Placito* 7. But note this exception where it is matter of authority, it is otherwise, he must doe it himselfe. 21 H.6.5. 42 E.3.23.

129 *Qui remedio destituitur reipsa valet, si culpa absit.* Upon this reason it is that he who hath a reversion by way of use, which is executed by 27 *H.* 8. shall avow, have wast, &c. without attornment. Upon the same reason tenancie by curtesie, shall be of a rent before seisin, To make the obligor executor, is a release in law because he cannot release to himselfe, *vide* 7 *H.*7.11. *fallit regula.* A parson pays an annuity, and takes an acquittance, the successor shall not have this, & yet his plea of payment is not good without it. 6 Report 63. 3 H.7. 8 E.4.3. 44 E.3.18.

130 *Qui magis Scit & potest de eo magis requiritur.* If a stranger is to plead that such a one hath to name *John Abbot* of *Ramsey*, it is sufficient, but if the Abbot himselfe was to plead such a plea, he shall shew how his name is so, &c. See 13 *H.* 7. 19. 1 E.4.7.

131 *Quicquid solo superstruitur solo cedet.* And therefore if one build upon

my land, or plant trees they are mine. Exception, if my water by long continuance of time by little and little imperceptibly wear, and so run upon your ground, yet it is mine and not his upon whose ground it runs.

12 Ass. 93.

132 *Quicquid remittitur fieri æquat facto.* A deed is delivered into equall hands, to be delivered to I. S. upon certain conditions, the conditions are broken, but he that was party to the delivery doth release the conditions, now it's all one as if they had been performed,

14 H. 6. 11.

133 *Quæ non prosunt singula juncta juvant.* Tenant for life in remainder shall not punish wast, nor have a Writ of right, but if he joyne with him hath the fee, hee shall have both. Lessee for years grants part of his terme, and both joyne in a surrender, this is a good surrender, which severally was not good.

F.N.B. 30.

14 H. 7. 4.

134 *Quod necessario intelligitur non deest.* A fine with proclamation is pleaded, and he shews that *termino paschæ*, 30 *H.* 8. So many proclamations were and *termino Trin.* 4. proclam: and Michaelmas term 30 *H.* 8. other foure, and exception was taken that no terme was added

7 Eliz. Dyer 234.

to

to Trinity, but ruled ſufficient becauſe it is added to Eaſter and Michaelmas *& neceſſario ſub intelligitur* to the other

135 *Quod non capit diſcus capit fiſcus.* The appellee in robbery diſclaims in the goods, and after is acquitted, the King ſhall have them, money is to be paid to I. S. who dies without heirs or extor, and ſequeſtration was, &c. It is ſaid the King ſhall have this money. 12 E.4.5. 48 E.3.31. The Earle of *Marches* caſe.

136 *Ratio dicti minus valet quam dictum ubi differunt.* A Biſhop certifies baſtardie, and indorces the reaſon of it, becauſe the husband was beyond the Seas ſeven years, the certificate is good of the baſtardie, and the reaſon of it rejected. 38 Aſſ. 18.

137 *Relations.* It is a fiction in Law uſed to ſeverall neceſſary purpoſes, ſometime to make a nullity of a thing *ab initio*, which had an *eſſe* to certain purpoſes, and for other neceſſary uſes in the Law.

138 *Relatio & non ad ultimum.* A Writ is brought of reſcuing his goods, and denying to pay toll, *contra pacem, &c.* This ſhall refer to the Reſcouſe and not to the toll. Note where the thing is vain to 30 E.3.15.

which the relation should be, as place &c. there reference shall not be ad *ultimum*. in that kinde, where the place was not put *pro loco*, but for another purpose. A carve of land is in demand, medow, wood, and rent, & an exception comes after all, *forstries* 20 Acres, this exception goes to the Land, A demand is by Writ *quod reddat manerium de W.* & two acres of land *cum pertinentiis in* Cliderow, this *cum pertinentiis* shall be referred to the Manner, though it is in another Town then Cliderowes the same Law is where severall Lands in severall Towns are in demand *precipe, &c. & interim messuagia illa terras prata reditus, & cetera* refer to all, A bond is made to A, B, and C, Yeomen, this goes to all three *destringas* M. *quae fuit uxor* T.S. *de Marton Davie*, this addition of place refers to M. A declaration was of a thing done at M. *juxta Ston in Com. Northampton*, and after the defendant at *Ston, in Com. predict.* assume &c. *Warwick* was in the Margent, and *Ven. fac.* went to the Sheriff of *War:* and tried there, and judgement was stayed for that *Northampton* was the last Town and County named, and the rule given

30 H.6.
32 H.6.17.

6 E.3 42.

6 E.3.12. Sir *Adam de Cliderowes* case.
17 E.3 26 77.
1 Ass 31.

1 H.6.23. Plo *Crofts* case.
4 H.6.3.
Dyer 45.

given that reference for the moſt part is to be *ad proximum antecedens*, though it is abſurd, or will orethrow a verdict, &c. See *Plo. Adams caſe*, 6. exception. 9 *Rep.* 27 5 *E* 4. 1. 6. *F N.B.* 2 *D.* 18 *H.* 8. 1, 6. *Rep.* Sir *H. Finches caſe.* *M.* 35 Eliz. Caſe *Child* and *Towers.*

139 *Relation will rectifie incertainties in place, time, meaſure, &c.* A condition of a bond was to diſcharge him of ſuch a rent againſt R. & alſo to pay his arears incurred before Michaelmas next, both ſhall be before Michael. by relation to this ſubſequent word Michaelmas. A Leaſe is of W. acre & rent to be paid at D. upon the feaſt of St. *Michael*, and if it is behinde by 40 daies to reenter, though no place is appointed where it ſhall be paid at the 40 dayes end, it ſhall be referred to D. Condition of a bond is to make a leaſe before Michaelmas to the Obligee for 21 years, if A will aſſent, and if not, then for 21 years, A will not aſſent the leaſe for 21 years ought to be made before Michaelmas. Affile of the moitie of a houſe, a carve of Land, and 40 ſhillings rent, and ruled onely a moity of all is in demand. A man grants ten acres of his land in D. *ſimul cum communia* 18 *E.* 3. ff. barr 247. Plo. 70. *Kidwallies* caſe. 18 Eliz. Dyer 347. 24 Aſſ. 9.

5 Ass.3. *nia posture in omnibus terris suis*; This shall be in D. onely, and not charge his lands elsewhere.

140 *Relation shall make things have*
H.7.16. *been, as if they never had been.* The husband disagrees to a feffment made by his wife, it is void *ab initio*, so that he may plead *ne infeffa pas*,. A devise is that executors may sell land, &c. when they sell all
H.7. mean charges made by the heire in the
H.8.10. interim shall be avoided by relation to the time of the death of the testator. I dissese A. to the use of B. the disseisee releas to me, and then B. agrees, this agreement by rela-
4 H.8.18. tion shall be, as if he had agreed before the release, and so shall defeate it. Jurors alien their Land away between the teste of the writ of attaint and judgement, yet
2 E.3.26. they shall be charged to the King for the estrepment by relation. Cause of assise brought was for rescuing a distresse taken for rent, and then an office is found which intitles the King, who seises the Land, and then an *ouster le main* is sued, the assise is gone for ever, because the King shall bee
31 Ass.1. said in possession at the time of the rescous by relation of this office, upon whose possession

ſeſſion no diſtreſſe could be made. *See Plo.* 281. 10 *H.*7.18.

141 *Relation to defeat a thing, ſhall be intent a ad unum* Husband and wife tenants in tail, ſhee brings dower after his death, this unſetleth the eſtate was joynt in them two, but ſhall not have relation to defeat a Reverſion granted by the reverſioner Atournament makes the ſervices paſt *ab initio*, yet nothing of the arrears ſhall be paid in prejudice of the tenants which are third perſons. The Lord is intitled to the marriage of an heire of the diſſeiſee, the heire releaſe to the diſſeſſor, hee is in now from the time of the firſt diſſeiſen of a good eſtate, but this ſhall not hurt the Lord of his Wardſhip, &c. An infant is infeoffed and diſagree, this defeats it *ab initio*, as to himſelfe to avoid all dammages, but not to make a void gift by his feffor good: a remainder is limited to the King, and before inrolment of the deed he grants this over, and then the deed is inrolled, this will not make the grant good.

3 Report Caſe *Butler* and *B.*

48 E.3.16.

11 H.7.8.

7 H.6.12.

3 Report Caſe *Butler* and *B.*

Ibib.

142 *Relation will yeeld to neceſſity.* The husband is eſſoyned, and at the day

fails to bring in his warrant, or doth not appear, the judgement shall relate to the time of the protection, or essoign cast, &c. yet his wife may bee received for no time covenable was before to pray to be received untill default, &c.

3 E.4.17.
21 Ass.17.

143 *Relation shall not be to take away things collateral all, &c.* Trespasse is made to A. and after his estate is defeated by condition performed or Act of Parliament, this shall not relate to take away his action vested, &c. A bond is delivered to my use, I disagree this shall now loose his force from the time of the disagreement onely.

4 H.7.11.

3 Report Case *Butler* and *Baker*.

144 *Relatio ad principium, &c.* Lessee for yeers is bound to I. S. to make to him the best estate he can, and afterward the reversion, or releases to him, the lessee shall be discharged of the bond if hee grant the estate he had at the bond making. Estranger abates, after the death of the father, the son dyes his wife shall not have dower for this abatement shall relate to the death of the father. Administratour *de son tort* takes letters of administration, this shall relate to the death of the In-

2 H.8.5.

1 E.4.60.

E.4.33.
8 H.6.22.

Intestate. An Escrow is delivered by a feme sole, if she marry or dye yet by relation it shall be good. An Act of Parliament hath relation to the first day of the Session. Presentment *tempore belli* is not good to gain possession, though induction was *in tempore pacis*, a blow given in time of *insane memory*, though he dye when of sane memory it is not capitall. Sale of goods is out of the market, and after they are brought into the market and delivered there, yet it relates to the first sale, &c. and so takes away no property of an Estranger.

14 E. 4. 2. 21 H. 6. 3 Report case, *Jennings* and B. 33 H. 6. 17. 1 Report 198. 1 Mar. Dyer, 99.

145 *Relation to time, place, &c.* In case of atteindor by verdict in felony, It shall relate to the time of the fact done, of outlary it is otherwise, but in case of treason outlary shall relate to the fact done. Atteindor by Act of Parliament shall relate to the first day of the Parlia. one shall not be accessary to a felony by relation, but onely from the death not blow given. Arbitrement was pleaded at D. *scilicet* that such an one shal grant an Annuity out of the Mannour of S. & in conclusion says, *quod loco supradicto, &c.* this shall relate

30 H. 6. 5. 35 H. 8. B. Crom p. 77. Dyer 50.

to

12 H.6.17. to D. and the *Venire facias* ſhal be then: a *Venire facias* was *ad recognoſcendū*, if an Executor did adminiſter *aliqua bona* that were the Teſtators after his death, theſe words after his death, ſhall relate to adminiſter and not to goods, to examine whether they came after the death or not.

1 H.4.13.

148 *Relatio ſit ad accommodatior a.* A man leaſes for the life of I. S. & after gives all his lands & reverſion of this parcell *habendum* all his lands and parcell *cum acciderit proxime poſt mortem* I. S. theſe laſt words ſhall relate to the reverſion onely.

Hill.19. Eliz.. *Gowers* caſe.

9 Report Caſe *Hickman.* The Obligee doth acknowledge he is ſatisfied, all bonds, and promiſeth to deliver in all bonds (except one of ten pound, this exception goes to the *word ſatisfied*, and reſtreins this and not onely to the words deliver in, ſee the word *(ſuch)* is to equalls in the miſchiefe and not to any before in the ſtatute there named. See 22 *E.*3.4. Condition of a bond was, if the Defendant enter peaceably, ſo that the Plaintiffe may bring his action before *Michaelmaſſe*, in this caſe, theſe words before *Michaelmaſſe* ſhal relate to the en-

11 Report 31.

37 H.6.18.

tre

onely, and not to the bringing of the
tion.

149 *Relation to avoid thing or a vaine thing will deſtroy that was good in the premiſes.* As a grant is by me of my lands in D. which I had by deſcent, or of the gift of I.S. if this be falſe it will deſtroy my grant, A bond to performe all Covenants between A. B. and C, in ſuch an Indenture, and there is not any ſuch, the bond is not good, one makes an acquittance of debt, which was recovered by a judgment, &c. and there is no ſuch it is *void*, huſband and wife are ſeiſed of land, and a grant is made of the reverſion of the land which the husband holds, this is void to paſſe this reverſion. *Contra ſepius.* A bond is of thirty pound and the Obligee upon receit of twenty pound, &c. makes an acquittance thus, received in part of twenty eight pound, &c. the ſumme of twenty pound, this ſhall not make fruſtrate the acquittance if not that averment is that twenty eight pound was for another contract. A reverſion of lands in D. *quæ omnia ſunt*, in leaſe to I. S. for life is granted, though no ſuch leaſe is, it is good. See

37 H.6.18.

11 H.7.6.

33 H.8. Dyer. 50.

11 ff. Grants 63

48 E.3.18.

Plo.

Plo. Case Throgmorton. *Plou. Adams case*, 5. *exception*, 10 *Rep. Legats case*, an indēture of defesants refers to a Statute made *primo Maii, &c.* and it was another day, yet it is good because an agreement was in the summe of the Statute, and name of the parties. See 20 *Ass.* 8, 26 *Ass.* 38. 31 *Ass.* 1.

17 E. 3. 35. Sir *Iohn Hardshals* Case.

148 *Semel malus semper presumitur malus & contra.* A Jury was challenged *cum panello*, for being made favourably by an Officer of the Sheriffes, and upon a new *Ven. fac.* part of the same jurors are returned by the Sheriffe himselfe, and ruled bene, and the suspition shall not be said to continue.

33 Ass. placito ultimo.

149 *Similitudo non currit quatuor pedibus* Resommons is *ita quod sit (in eodem statu.)* Yet a default saved, which was before discontinuance, so essoigne lies which did not before.

5 H. 7. 39. 40.

150 *Sic utere tuo, ut non lædas alieno.* Lessee for years shall so take his hedgebote, that he doe not destroy common of estouers which another man hath there, he which hath common in Land not inclosed, shall keep his cattle out of an estrangers land. If beasts are driven by the highway

46 E. 3. 17.

20 E. 4. 11.

way, he ought at his perill keep them out of the Lands adjacent to the way, &c. except in case where the owner is bound to inclose &c. but note, prejudice may insue by my rest upon my own land without danger, as where a man erects a wall, part upon my land, and I destroy this upon my land, and the rest by that means falls down this is excusable. 20 E. 4. 11. 10 E. 4. 7. Pasch. 34. Eliz. C. rot. fordvers. Gill.

151 *Singulare distributive sumpta æquat plurali.* Tenant in assise makes severall bars, & the plantiffe makes severall titles, and the tenant pleads *veigne l'assise supra titulo*, this goes to all the titles. A lease is *pro uno anno*, and if they agree that he shall have the land for three years *reddendo durante termino prædict.* ten pounds annuatim this reservation goes to both termes. In debt the plantiffe declares that the defendant and his brother were bound in an obligation *sigillo suo sigillat*, this extends *distributive* to both. Dyer 325. 10 Report Case. *Loefeild.* Mich. 13 *Eliz.* Case *Briton* & *Bolton.*

152 *Synonyma will not serve in our Law.* The Statute *W.* 2. forbids entre, *ubi ingressus non datur per legem*, now if in an indictment, &c. it is layed, *quod* 9 *H.* 6. 19.

in-

5 Report Case Long. *ingressus est illicite*, this is not good, so an indictment for murther by thes words, *ex malitia precogitata necavit, &c.* is not good without the word *murdravi.*

153 *Surplusage, what power and influence this shall have in Grants &c.* And note some use may be made of it, as where a contract is to deliver a horse &c. and a bond is to deliver it, now albeit by the contract the property be vested in the obligee, yet in this case if the horse is tendred to him, and he refuse, he hath lost the propertie, because this bond which was more then needed hath determined the contract, *nota.*

3 E. 4. 12. Perkins. 784.

152 *Totum continet suas partes & è converso.* The Statute *W.* 2, which gives a writ *ad petendum advocationem decimarum:* implies he shall have this writ for a fourth part of Tithes. A statute is made that the adjournment of Michaelmas Terme shall not hinder fines, &c. This implies that though part of the Terme onely is adjourned, that shall not let, but fines are well levied. A Statute is if a man is rediſſeſſed of land, hee hath recovered before, such a penaltie shall bee, if he is rediſ-

30 E. 3. 13. 7 Report Case Bulwar. 2 Eliz. Dyer 186. Institut. 1. 154.

seised

ſiſed but of part of that Land, it is within that ſtatute. A man hath a way for foot, horſes and waynes, if this is made ſo ſtrait that wayns cannot paſſe, which is onely part of that he hath way for, yet the writ ſhall be, *quod obſtruxit viam* generally.

155 *Totius & partis eadem ratio.* Aid was granted for part of the Land charged with rent, it ſhall ſtand for all. He which diverts part of a water ſhall be ſaid in law to divert it all, *fallit regula aliquoties.* A liberate comes to an Officer to pay a hundred pounds, if he *have it all, he ought to pay it*, but if he want part thereof, hee is not bound to pay that part &c. 22 H.6.2.24. Inſtitut.4.116.

156 *Totum qui concedit partes negare non poteſt.* It is alledged in Aſſiſe that all the lands within the fee of Saint *Peter* of *Yorke* were departible between the males, and that the ten acres in queſtion were within that fee, and the tenant would have ſaid that theſe ten acres were not departible, but was not ſuffered. *This doth not hold where the matter affirmed of parcell tends onely to alter the juriſdiction.* As where a Mannor is alledged to be ancient 23 Aſſ.12. 1 Exception. 9 E.3.18.

ent Demeſne, hee may ſay that Black acre parcell of the Mannor is Frankfee. *Falſa regula*, alſo in caſe of time that which may be ſaid of a moneth of time, cannot of a week, &c. As the ſtatute 5 *Eliz.* gives a penalty againſt him trades by the ſpace of a moneth, not being an apprentice, &c. if he trade but a weeke or fortnight hee ſhall forfeit nothing at all within this Law.

5 Exception.

157 *Tort, of his own wrong, a man ſhall not take advantage.* I.S. takes from me the releaſe he had made, now I ſhall plead it without ſhewing it. Leſſee for years cut trees, he ſhall not have avail of this to keepe it toward reparations, &c. Husband and wife are impleaded, and the demandant holds the wife of the tenant that ſhee cannot appear, this ſhall not turn to a default in the tenant. See 4 *Report Caſe* Sir *Andrew Corbet*, & 34 *H* 6. 11. *Regula*, *fallit*, in caſe hee to whom the wrong is done had it in his power to remedy it, there it ſhall prejudice him if he doe not remedy it, and it ſhall be to the availe of the wrong dore, as I am bound to infeffe I. S. before Michaelmas of B. acre

42 E.3.18.

5 Report Caſe *Wimarke.*

4 Report Caſe *Harlakenden.*

20 E.3.46.

3 Exception.

re, and the obligee, diſſeiſe mee of that re, here becauſe I may enter and regain e Land and make the feff, if I doe not I ve forfeited my bond: So where Cove- ant is to build a houſe by the leſſee before e end of the Terme, and leſſor enter up- him and outs him, yet hee is bound to oe it, or elſe the Covenant lies, unleſſe here be ſpeciall matter to excuſe it, as if e other hold him out by force. 8 Report 92. *Frances* Caſe.

158 *Utile per inutile non vitiatur, nec mendatur.* Of this nature is all *Surplu-age* in grants, deeds, &c. It doth nei-ther good nor ill. A. releaſe to B. *ad primum diem Maii quod eſſet.* All Cove-nants, &c. this is a preſent releaſe, and the ſubſequent words *ad primum diem Maii quod eſſet* are idle. A deed is that ſuch a thing ſhall be done before Whit-Sunday next, being the firſt day of June, though Whit-Sunday is the fourth of June, this ſhall not fruſtrate the agreement, but ſhall be made on Whit-Sunday. Uſes are decla-red in an indenture in taile, in which is power of revocation, and upon recitall of this deed he declares that *prædicti uſus*, to him and his heirs ſhall be void, yet this 36 Eliz. Caſe. *Farewell* and *Barker*. 4 Report 93. 35 H. 8. Dyer 57. Paſch. 1. Car. Caſe Biſhop of *Norwich*. Vid. 41. Aſſ. 25 8 Report Caſe *Frances*.

a good revocation, and the other word idle, *scil.* to him and his heirs. A rent granted for legality of partition, this good without deed, now annuity doth not lie though a deed is in this case made because surplus, &c. *Exception*, Somtime idle and vain words will have operation as A. release to B. *omni modas* (which the said B. hath against A.) this was adjudged a void release. Lessee for life make a lease for three years, & then grants *tenement a predict a habendum* after Michaelmasse, all this is void. The Sheriffe executing a *Fiere facias* takes upon him upon the sale of a Terme, to nominate the beginning of the terme, and saies it was *1 Mart*, where it was another day: this surplus makes the whole execution null. An union was pleaded to be *concurrentibus his que jure debent, &c.* and by assent of the Ordinary, this surplusage expresly contradicts that was implyed in the *concurrentibus his*, &c. in which the Ordinary might well have been intended also which now appears that he is not, and so vitiates all the rest, &c. for surplusage in cases of pleading, the Law varies upon several

Institutes 1. 346. 147.

Vid. 30 H. 6. 14

34 E. 4. 2.

2 Report Case *Buckler.*

4 Report Case *Palmer.*

10 H. 7. 19.

rall diſtinctions, in one caſe it ſhall hurt
d not in another, where ſurpluſage
akes a contradiction there it will doe 22 Aſſ.
urt; ſo in caſe of a Writ where there is
t ſubſtance to maintain the action, but 39 H.6.38.
r to increaſe damages, it ſhall doe no
rme. *Plo.*85. 46 *E.*3,3. 1 *E.*4.7. *Regi-* 37 H.8.3.
er 6:6. 12 *H.*7. *Kell.* 10 *H.*6.10. 8 *Re-*
rt 159 *Dyer* 235,236. 50 *E.*3.6 34 *H,*
. 48.

159 *Void, in a Statute where it is ſaid what ſenſe it hath, &c.* Obſeeve firſt 28 H.8. Dyc
where a Statute ſaies ſuch a thing ſhall be 28.
oid, yet the ordinary circumſtances are 3 Report 59.
to be obſerved, which by law are requi- Plo.107.
red, to avoid ſuch a thing as entre, and the
like. The Cannon ſaith that a ſecond ſhall Inſtitutes 1.
Benefice void, ſee if before ſentence, *vide* 273.
*Statut.*21. *H.*8. by that it is void pre-
ſently and lapſe ſhall incurre, and pro-
cheine avoidance is not grantable by a
Patron becauſe it's void. If it be inacted
that a bond made by I.S. ſhall be void, as
upon the Statute of 23 *H.* 6. of Sheriffes,
ſuch a clauſe is for a bond taken by a She-
riffe otherwiſe then is there directed, yet 5 Report 119.
he ſhall not plead *non eſt factum*, but

Plo.169. the speciall matter and demand. Judg-
ment, See action Stat. W. 2. Case 1. whe-
Plo.137. sayes, *quod finis sit nullus*, yet it is not ab-
solutely void, but avoidable by errour, an-
not otherwise, the Stat. of 3 *Eliz.* is the
grants of Deanes, &c. shall be void, ye
11 Report 73. is not so in all respects, for it's good against
him that made it, but void as to the suc-
cessor.

160 *Void, where a thing shall be for*
3 E.4.7,8. *part, or for a certain time onely.* A man
contracts for wages beyond that the Sta-
tute alows, this is void as to the wages,
but shall charge him in an action upon
Abridg. assis. the Statute. A man enters into Religion,
87. and his wife aliens the Land, of which
they were seised, and then he is darreined,
he shall avoid this for his life, but the a-
lienee shall hold it against the wife, so a
7 Report *Com.* terme may be avoided by tenant in dower
Bedfords Case. & revived afterward, and it shall be good
against the heire.

161 *Void not as to that was intended,*
may yet be good and effectuall to a collate-
rall purpose. An appeale is void being
21 H.6.29. brought by the youngest son, yet this shall
him excuse to be indicted, if the party is

ac-

acquitted upon this, but otherwise it is in case a woman brings an appeal of the death of another, then her husband because it is apparently ill within the record it selfe. A release of a feme covert is pleaded, this is void to make a barr, yet it will amount to a waiver of a good plea pleaded before to the writ. An issue joyned in waste was a *joofale*, the same plea notwithstanding may bee a confession of the wast. Retourne is by one Coronor of a Rescous upon a writ made to more Coronors, it is a voide returne, yet it will be a good suggestion upon which a processe shall issue for the Rescous: But *nota*, such a void act shall never bee good or avaleable in the same kinde it was void. Tenant in taile is, the remainder to himselfe in fee, he makes a feofment by deed, and a letrer of Atourney, &c. if this livery is not executed the remainder shall not passe by the deed: Bargain and saile is of a mannor, and all the trees the deed is not inrolled, this shall not work as a grant of the trees being of no effect for the Land. A man leases a mannor, and hath nothing in demesne at the time, but in services these

18 H.6.29.

10 Eliz. Dyer 272.

39 H.6.42.

Pasch. 11. *Car.* Case. *Baker* and *Hagget.*

11 Report 48.

16 H.7.3.

shall not passe, but *this exception hath it's exception*, as where the thing is *void, quoad modum tantu* as a fine, upon 4 *H.* 7. is not good for lack of proclamations, yet it's a good fine at the Common Law. A Statute is acknowledged which is not good, for some failers, &c. yet it is a good bond.

6 Eliz. Dyer 225

1 H. 6. 4. 7.

162 *Volenti non fit injuria.* A man shoots giving warning to all, &c. and one will go to the mark and is hurt he is without remedy. I am bound to make a house if you prohibit me to come upon the land I may plead this in bar, *exception* is where the fault and injury is essential to the thing and vitiates it, and is not personall, the law is otherwise, as where I will exchange with one hath a bad *title* and its knowne to me. So if I know of fraudulent conveyance and you buy the land, in both these cases the party shall have the remedy though hee was willing to the wrong, &c.

18 E. 4. 8.
19 E. 4. 2.

5 Report Case *Gouche.*

163 *Verba disretiva, shall not extend to joynt words & contra.* The Amercements of my tenants are granted, this shall not extend to those *held of mee and of others.* where its spoken of an act to be made by

32 Ass. 49.

A. It ſhall be by him ſole and not joyntly with others, but a ſurrender of all his leaſes, is good of thoſe hee holds joyntly as of others. Statute 8. *H.6.* is if one enter with force or peaceably and hold with force an action lyes, yet if both are done the action lyes. *Perkins.* 158. & 310. Plo.8.6. 3 E.4.19.

164 *Verba conjuncta non capiantur diſcretive & contra.* A *Recordare* is to remove a plea betweene *A* and *B.* Plaintiffs, and *C.* and *D.* Defendants, and every Plaintiffe would have counted ſeverally and not permitted, for it ſhall be intended joynt plaint onely. A ſtatute ſpeaks of an act to be done by two parties, this ſhall be intended joynt act. 5 *E.*3.14,15. *Contra* where they ſhall be taken diſcretive, three men then ſubmit of all matters betweene them and *A.* this extends to matters ſeverall among them, as well as joynt. Severall Demiſes and Rents are in one Indenture, and in concluſion hee covenants to pay *reditum praditum*, this goes to all the Rents. Two joyn in a grant of *omnia bona ſua*, ſo a releaſe to *B.* and *C.* all actions, this extends to their ſeverall goods and ſeverall actions to have operation to the 3 H.7.14. 29 E.3.26. 2 R.3.18. 21 H.7.29. No.lib. Entry 115. 19 H.6.4.

the most advantage against him made the deed or grant. Three severall men covenant ſeparatim by Indenture and in this, one is bound to perform the covenants made between *A.B.* & *C.* &c. he ſhall be bound to
11 H.7.4. performe any covenant made betwixt them ſeperatim. Severall rents are behind by a Priot and his Predeceſſour, and in his Count he concludes, *non dum rediderunt*,
17 E.3.2. And this holden good though part was due in the time of the Predeceſſor, and part ſince.

165 *Una hirundo non facit ver.* A
8 E.3.2. Lord hath allowance one time to have *Conuſans of plea, vbi ipſe pars fuit*, this will not ſerve at another time to hold ſuch plea.

166 *Univerſale non comprehendit omne particulare.* A man is received to
38 H.6.13. ſerve in all occupations. In debt for wages the defendant may wage his law, which yet hee cannot do in *caſe of husbandry*, *Ergo. In decies tantum*, it is no plea for
21 H.6.30. the defendants to ſay that they tooke not any mony for ſaying their verdict, but they ſhall ſay, *nec aliquis eorum*, &c. See 3 *Report*, Marqueſſe of *Wincheſters* Caſe, where all rights in a ſtatute did not extend

to

right of action. So where an exigent is returned against three, *quod non comparuerunt* it must be *nec aliquis eorum comparuit*, &c. else its not good. 4 H.7.8. 6 Report 56.

166 *Ubi duo jura in una concurrunt persona æque est ac in diversis. Articuli super chartas ordaneth.* That in case of death of one within the Verge, the Coroner of the County, and of the houshold of the King shall joyne in the Inquire, and holden if *one is Coroner* of both he shall well execute this authority. Institut. 1. 194. 195. Institute 2. 134 *Holcroft* Cale.

167 *Vigilantibus & non dormientibus subveniunt leges.* This the reason of lapse incurring for lack of presentment. Warranty barring for lack of entry, discents barr entryes for lack of clayme, title to tenancy by curtesie is lost for lack of entry. statutes of limitations barr actions, the first Grantee that its attornment shall have the Reversion or Signiory, &c. and a hundred Cases more are ruled upon this ground. A man is outlawed and error is in the Record this may be reversed, the same terme by plea, but after not. A tresspasse is committed to two joynttenants, and each of them releases, and after brings tresspasse, Litt. 552. 36 H.6.2.

and

and the defendant pleads the releaſe of one of them which is found againſt him hee ſhall not be afterward admitted to plead the other releaſe, becauſe he hath ſurceaſed his time.

Finis Topicorum legum Angliæ.

Which was allowed to the Preſſe two yeers ſince *in furore belli*, but the Bookſellers were unwilling to Print it then becauſe it was in French and few in town.